



EMPLOYMENT TRIBUNALS

Claimant

Dr C Mallon

v

Respondent

Carbon 60 Limited

Heard at: CVP

On: 20-24 May 2024

Before: Employment Judge R Wood; Mrs J Nicholas; Mr R Allan

Appearances

For the Claimant: In Person

For the Respondent: Mr Mahmood (Counsel)

JUDGMENT

1. The Claimant was not the directly discriminated against by the respondent on the grounds of disability contrary to section 13 of the Equality Act.
2. The Claimant was not discriminated against by the respondent based on the grounds of something arising out of disability contrary to section 15 of the Equality Act
3. The respondent did not fail to make adjustments contrary to section 20 of the Equality Act 2010.

DECISION

Claims and Issues

1. Page numbering referred to in square brackets in these reasons are to pages in the bundle, unless otherwise stated.
2. The Respondent is a recruitment agency which specialises in project engineering and technical recruitment. It operates as an employment business and an employment agency. On 31 October 2022, the claimant applied for the position of product marketing manager with a client of the respondent. As part of the application the claimant disclosed that he had a disability in that he had been diagnosed with dyspraxia, autism and ADHD.

He suggested that this made it difficult for him to process information, and to express himself, in writing. The claimant submitted that this prevented him from tailoring his CV to any particular role.

3. As a consequence, he requested that the respondent made adjustments for him. He suggested that the respondent share the essential criteria for the role, with a view to him then requesting an oral application if he thought it appropriate. This would allow him to make a bespoke application.
4. On the same day, the respondent informed the claimant that his application was unsuccessful because his CV did not show that he had “technical automotive skills’ deemed essential for any candidate. The respondent rejected the claimant’s application before making adjustments. The claimant asserts that this was failure to made adjustments in relation to a ‘provision, criterion or practice’ (PCP) contrary to section 20(3) of the Equality Act 2010 (‘the Act’). Further, it is argued that it constituted a failure to provide an auxiliary service contrary to section 20(5) of the Act. In either case, the claimant says that the claimant was causes a substantial disadvantage.
5. The claim includes 47 other applications made by the claimant between April 2018 and June 2023 (see the respondent’s schedule of applications). The claimant asserts that the respondent’s conduct in relation to all of the said applications amounted to breaches of the Act in similar terms.
6. Early conciliation started on 1 November 2022 and ended on 23 November 2022. The claim form was presented on 10 December 2022. It was common ground that any application brought before 10 August 2022 fell outside of the primary limitation period for a discrimination period. Applications 39-47 on the schedule were made after the lodging of the claim.
7. The respondent resists the claim(s). It is submitted that the applications 1-34 are out of time, and that it would be inappropriate to extend time in the circumstances. Further, that those claims cannot be appropriately viewed as a series of acts of discrimination. It also avers that this claim made after the claim was lodged are not justiciable in the absence of any attempt to amend the claim, or make a fresh claim encompassing the later applications.
8. In relation to applications 35-38, the respondent dies that there was a substantial disadvantage arising out of his conditions in the context of the claim, or that it was aware that the claimant was likely to be placed as the disadvantage, if one has been established. In addition, the respondent denies that there was any adjustment (or auxiliary service) which would, her might, have been effective in removing or reducing the disadvantage that the claimant experiences as a result of his disability. In essence, it is suggested that any problems that the claimant experienced when making the said applications were of his own making, and not related to his conditions.

Procedure, Documents and Evidence Heard

9. The Hearing took place on 20-24 May 2024. The claim was heard via a remote CVP hearing. We first of all heard testimony from the claimant . We then heard from the respondent's witnesses: Mrs Helen Lawrence (compliance manager); Mr Patrick Jones (specialist recruiter) and Mr Adrian Weideman (senior recruitment consultant). Each of the aforesaid witnesses adopted their witness statements and confirmed that the contents were true. We also had an agreed hearing bundle of documents which comprises 580 pages; and an authorities bundle which comprises 222 pages. We also had helpful submissions from Dr Mallon and Mr Mahmood. Both expanded on their submissions orally.
10. In coming to our decision, the panel had regard to all of the written and oral evidence submitted, even if a particular aspect of it is not mentioned expressly within the decision itself.

Legal Framework

11. The relevant legislation in respect of the allegations of direct discrimination is contained in the Equality Act 2010 ("the Act").
12. Disability is a protected characteristics as defined by section 4 of the Act. Sections 39 and 40 prohibit unlawful discrimination against employees in the field of work. Section 39(2) provides that:

"An employer (A) must not discriminate against an employee of A's (B) -

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B; or (d) by subjecting B to any other detriment."

13. Section 13 defines direct discrimination, and reads as follows:

"Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

14. Section 15 makes provision for discrimination on the grounds of something arising out in consequence of disability. It states:

"Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

13. Section 20 deals with the duty to make adjustments for those with disabilities:

"Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

....

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.”

14. Section 136 of the Act provides that:

“If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred”.

This provision reverses the burden of proof if there is a prima facie case of direct discrimination.

15. In summary, the Act provides that a person with a protected characteristic is protected at work from prohibited conduct as defined by Chapter 2 of it. In addition to the statutory provisions, Employment Tribunals are obliged to take in to account the provisions of the statutory Code of Practice on the Equality Act 2010 produced by the Commission for Equality and Human Rights.

16. In relation to direct discrimination, the Tribunal has applied the principles was summarised by the Employment Appeal Tribunal in London Borough of Islington v Ladele (Liberty intervening) EAT/0453/08, which include the following:

(a) In every case the Employment Tribunal has to determine the reason why the claimant was treated as he was. In most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.

(b) If the Employment Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.

(c) Direct evidence of discrimination is rare and Employment Tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-stage test. The first stage places a burden on the claimant to establish a prima facie case of discrimination. That requires the claimant to prove facts from which inferences could be drawn that the employer has treated them less favourably on the prohibited ground. If the claimant proves such facts then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If they fail to establish that, the Tribunal must find that there is discrimination.

(d) It is not necessary in every case for an Employment Tribunal to go through the two-stage process. In some cases it may be appropriate simply to focus on the reason given by the employer (“the reason why”) and, if the Tribunal is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the Igen test.ry to determine the characteristics of the statutory comparator.

Findings

17. Based on the evidence that we heard and read, the Employment Tribunal made the following primary findings of fact relevant to the issues that we had to determine.
18. The claimant’s a neuro-diverse meme rof the job market. At the relevant time, the claimant had a number of medical condition. These included dyspraxia, autism and ADHD. He may have not been formerly diagnosed with them all at the relevant time, but we are satisfied that the had the conditions.
19. Autism is a neurological and developmental disorder which affects how people interact, communicate, learn and behave. It can be diagnosed at any age. In fact, the claimant had not been diagnosed until relatively recently. Dyspraxia, also known as developmental co-ordination disorder (DCD), is a disorder that affects movement and coordination. It does not affect your intelligence. Attention deficit disorder (ADHD) is a condition that affects people’s behaviour.
20. Taken together, we were satisfied that by reason of these conditions, the claimant has a disability as defined by the Act. This is accepted by the respondent. In the claimant’s was were satisfied that relevant symptoms of his conditions were as follows:
 - he has difficulties with written communication in that it mighty take him longer to complete a written document;
 - written documents will lack appropriate grammar and punctuation;
 - there is a disparity between his ability to use written and spoken word;
 - he will tend to be more direct in his language and tone;
 - he has problems remembering certain types of information;
 - It may take him longer to process blocks of text;
 - He is routine orientated and likes to have a structure to things;
 - he is particularly sensitive to rejection.
21. Notwithstanding the barriers he has faced, the claimant is highly educated. He has has an graduate chemistry degree; a Masters in instrumental analytical science; a PhD in chemical engineering). He has had in the region of 30 jobs. It has not always been easy to ascertain with any precision the

nature and extent of his previous vocational experience. In general terms, he has worked partly in the engineering roles, some of which were in the chemical gas and oil sector. In addition, he was also had a number of roles in R & D tax roles. This involved providing guidance to organisations looking to take advantage of tax incentives to engage in 'innovative' fields. He appears not to have had full time employment since 2018/19.

22. The claimant also has a self employed role selling products on eBay. These include oil, coolant and scratch cloths. There was some issue as to the nature and extent of this business. We were shown an extract of the businesses' (Renovareuk Limited) accounts for 2023. These showed that the total net assets in 2023 were just over £77,000; and in 2022 just over £34,000. The claimant suggested that he has made an error when submitting his account and that the figure of £77,000 was in fact turnover. There is no need to resolve this issue. It suffices to find that the business was a significant undertaking which required a considerable amount of the claimant's time and energy. It seemed to us to be more than a hobby, as it was described by the claimant.
23. We have been given quite a considerable amount of information as to the claimant's litigation background. We stress that we have made our decision by reference to the evidence we read and listened to during this hearing. We have declined Mr Mahmood's invitation to rely upon findings of fact made in other cases involving the claimant, particularly those made by first tier tribunals. Some of these may have been claims brought on a skald basis to this one. However, it was our view that each case was likely to turn, to some extent on its particular facts, and that they were therefore unlikely to be of much assistance.
24. We note and accept that the claimant has been involved in over 100 claims to the Employment Tribunal. He accepted as much, although he could not be any more specific. He has never had legal representation. He is therefore a surprising experienced litigator. This is relevant firstly in that he is familiar with the law as it relates to time limits for bringing claims in the Tribunal. The claimant accepted that he had argued time limit issues in previous claims, and had had cases struck out on this basis in the past. Secondly, that he has been able to manage these claims, presumably multiple claims in parallel. He has been able to produce the sort of documents which are required such as claim forms, witness statements, lists of issues, written submissions, and the volumes of emails and other correspondence generated by litigation. He has done so in this case, although when asked about it he told us that he had used artificial intelligence (AI) to assist with the generation of his witness statement, written submissions and his list of issues. However, he has only been using this technology for about 6 months.
25. This then brings us to the events giving rise to this claim. The claimant told us that he makes about 2,000 job applications each year. These are largely made via a CV, often to platforms such as 'CV Library'. The claimant told us that he had made about 4,400 applications through CV library alone up to 2022. The sheer volume of job applications that the claimant makes is

sobering. It means that he is making in the region of 40 job applications each week. The claimant explained that this was how he had always found work. It was his feeling that his conditions meant that he was likely to be rejected more than non-disabled applicants, and that as a result he needed to make more applications. We have some sympathy with this observation. But it was our view that this level of applications placed considerable burdens on the claimant, especially in the light of his conditions.

26. We were told that his method is to carry out searches in the job websites, by job title, proximity to his home, and by the wages being offered. If, by reference to these criteria, he had a 'hit', then he might scan or part read the advert. If it seemed appropriate, then he would press the apply button (for CV library). There is an option for an applicant to also submit a covering letter, but the claimant invariably does not avail himself of this option.
27. So far as is relevant to this case, the claimant used three different CV's. They appear at [477], [35] and [39]. It is the version at [35] which was sent in relation to applications 35-38 on the schedule. We heard conflicting evidence as to what happened to the CV's when received by recruitment consultants at the respondent. The claimant understood that they were subjected to a 'buzzword' search, and that insufficient hits resulted in rejection. This was, to some extent supported by Mrs Lawrence, who was not a recruitment consultant herself. However, we preferred the evidence of Mr Jones, and Mr Weideman on this point. They were adamant that they read individual CV's in some detail. We accept this was the general approach, particularly for specialist roles likely to attract a limited response.
28. In terms of the job adverts themselves, it is a key aspect of the claimant's case that they are summaries of the original job description submitted by the respondent's client, and that to some degree there is further detail in the form of essential criteria for the role which is initially held back from applicants. It is not clear why the claimant holds this belief. In fairness to him, we have not seen all of the adverts for the application he made to via the respondent in this case. This is the result of a change in the respondent's client management system in 2022 which meant that data for adverts predating the change were not retained. However, having looked at the documents relating to the more recent job adverts, and having intended carefully to the respondent's witnesses, we find that the generally speaking, the adverts include the full job description. Some detail as to the name of the client, as well as wage information, might be removed. But otherwise, the applicant has access to everything sent to the respondent. There is no further list of essential criteria to be disclosed to applicants. To the extent that there are "essential criteria", they are to be found in the advert. We are satisfied that it would make little sense in a recruitment context to hold back any or all of the essential criteria for a role. It seems like that this would lead to a greater volume of applicants who were unsuitable. This was not in the respondent's interests, or potential applicants for that matter.
29. For reasons we will set out below, we are mainly concerned in this case with four applications. They are:

Application no.	Job Title	Date of Application
35	Product Marketing Manager	31/10/22
36	Process Manager	8/12/22
37	Product Marketing Manager (the same role re-advertised as 35)	8/12/22
38	Engineering Manager	8/12/22

30. The pattern of making an application seemed common, in general terms to all of the applications we have been asked to look at during this hearing. It is helpful to focus on application 35 as a specimen of the features relevant to the issues in this case.
31. The claimant applied for the role on 31 October 2022 by submitting the CV at [35]. He did so by reference to the advert which appears at [491-492]. His application as rejected on the same day by Mr Weideman. We note in passing that it is agreed that the claimant was unsuccessful in all 47 of the applications he made for jobs through the respondent.
32. The claimant explained that he usually applies for vacancies by CV. He described his CV as generic in that he does not tailor it to specific roles. He doe snot change it to incorporate key information or words relevant to a specific job application. It is his case that this is too demanding having regard to the processing deficit he has as a result of his conditions. For similar reasons, he says he has never submitted covering letters with applications, even though ‘CV Library’ has the facility to do so.
33. The CV he submitted contained the following important section:
- “Disability Disclosure*
- I have Dyspraxia and high-functioning Autism and potentially ADHD (still waiting for NHS assessment) and am unable to specifically update my CV for each role; this is a generic document. By way of reasonable adjustment under the Equalities Act 2010/Autism Act 2009, I request that you share the Essential Criteria for this role by email reply with me so that, if appropriate, I can make a bespoke verbal telephone application that addresses how I meet them. Gentle reminder: companies are under a legal duty to be positive and proactive towards reasonable adjustments requests. Many thanks for considering my request”*
34. The respondent accepts that by reason of this disclosure, that it was aware that the claimant had a disability. We find that it is a clear request for any further essential criteria for the role. However, as we have found above, the

practice of the respondent was to include all information in the advert. We accept that this was explained to the claimant in the correspondence that followed.

35. As for the request for adjustments, we find that the respondent's position was simple. Before engaging in an explanation of the question of adjustments, the consultant would read the CV to assess overall suitability for the post. If it was plainly an application with merit due to a lack of qualifications and/or experience, then the CV was rejected. It was only if there was some merit in the application that a consideration of adjustments might take place. As more than one of the respondent's witnesses put it, to do otherwise would be a waste of the applicant's time. In the claimant's case, there was sufficient information in the CV to make that assessment.
36. We are satisfied in any event that the respondent offered the claimant the option of speaking to one of its staff about the application. We find that this offer was made on several occasions, both this and other applications. It tended to be on the basis that a number was given, and he be invited to call himself to discuss. At [167] Mrs Lawrence expresses her views as follows:

"Whilst I fully appreciate that individuals with Dyspraxia may require additional support in the application process e.g. assistance with completing on line application forms, I am still unclear as to what reasonable adjustments you feel are specifically lacking in regard to your application for Product Marketing Manager (reference: BBBH119849). There is little we can do to support you in furthering your application when you do not have the background that the client is looking for. Please outline specifically what reasonable adjustments you require and how this has impacted your application in this instance

The job description outlined the essential criteria for the role which unfortunately has not been met, whilst I note that you have expressed an interest through your hobby you have not indicated any work experience in this area. If the recruiters have missed something and you feel that this can be captured in a verbal conversation I will arrange for someone to call you."

37. We are satisfied that the respondent repeatedly offered to discuss both the merits of his application, and his request for adjustments, both in relation to application 35, and the other relevant applications. We accept that this discussion took place after the claimant's application was rejected, and that this must have had an impact on the claimant's state of mind when engaging with the respondent. This may well have been, at least in part, why the claimant did not take them up on their offers of a telephone conversation.
38. The claimant told us that he did not read the advert in their entirety. He explained that he would scan read them. By way of example, looking at [491], he conceded that it was likely that he did not read the list of requirements towards the bottom of the advert, before applying. He would have applied based on the job title. He would not necessarily have been

aware that the one of the requirements was that he have “technical automotive skills”. We asked him why he adopted this approach. He explained that he found it difficult to work out from a block of text what was essential criteria and what were only desired by the employer. This was a processing problems, the result of his disability. He preferred to focus on the essential criteria, which is why he would request these once he had applied. He would then seek an oral application during which he could discuss how he might satisfy the essential criteria.

39. What followed in the few days after his rejection was an exchange of emails between the claimant and Mr Weideman, and then with Mrs Lawrence. Both explained to the claimant that he had been rejected because he did not have necessary skills and experience for the role. In particular, it was explained that he did not possess the requisite automotive background.
40. We carefully explored this proposition with all of the witnesses during the hearing. We find that this was plainly the case that he was not suitably experienced for this role. As Mr Weideman explained, and as was parent form the advert, the employer, an electric car manufacturer, wanted someone with technical automatic skills in a professional context. To coin a phrase used in the case, they wanted someone to hit the grind running. It was not one of those jobs where general marketing experience was sufficient. We accept that the claimant was not suitably qualified. He suggested that he satisfied the criteria in a number of ways. He pointed to his self employed business selling automotive products; his work in R & D tax for the company making the fastest ever electric car; and that his Ph D was related to fuel cells, which are similar to electric car batteries.
41. At [162] the claimant suggested that he had “fixed 20K cars and vans’ and that this qualified as “technical automatic skills”. However, he concede to us that his business involved posting out sachets of a lubricant for the engine and gearbox etc of his customer’s vehicles. As he put it, it is an additive to the engine oil. He did not accept Mr Mahmood’s proposition that this was a prime example of him exaggerating his his skills and experience, and that his applications were not genuine in that sense.
42. In our view, this is an important point. We find that looked at objectively, the claimant’s self employed business was not adequate relevant experience for this post. However, we are satisfied that the claimant believes that it was, and that this belief must be looked at through the prism of his disability. This was one example of many where the claimant demonstrated an inflexibility and literality of thought and problems with processing information. It was plain that he could not comprehend the problem of suggesting that he had ‘fixed’ 20,000 cars by reason of selling an oil additive. As far as he was concerned, he has sold the product which ad repaired the car, therefore he had ‘fixed’ it. In our judgment, it was a genuine held although obviously unreasonable belief.
43. A further example of this inability to assess the suitability of a job vacancy can be found at application 2 of the schedule. This post clearly required

someone with Parliamentary experience [474]. At the hearing, the claimant conceded that he did not have the relevant skills and experience, although his was not his view at the time of the application [52] and it was part of this claim for some time.

44. We find that the main cause of claimant's challenges in this regard was that he did not read the advert. We understand his desire to make multiple applications. But it cannot be in anyone's best interests to apply for posts without any consideration of what the employer is looking for in an applicant in terms of qualifications and experience. The posts we have looked at in this case are likely to be those requiring a high level of experience and skills. We were surprised that the claimant should think it appropriate not to consider these factors before making the application.
45. For application 36, the post required experience as a process engineer in an EPCM/EPC company. It was clear to us that the claimant was not aware what EPCM/EPC was even at the time of the hearing, and had obviously not considered his ability to satisfy the requirement before applying. For application 38, the role of engineering manager, the employer plainly required line manager experience against working for an EPCM/EPC contractor. We find that the claimant did not have such experience. It was his view that he might pick up the specialist skills as he went along. We took the view that an employer was entitled to ask for someone who would 'hit the ground running' and that potential applicants should be sensitive to this approach.
46. On 1 November 2022, the claimant contacted ACAS. He lodged his claim with the Employment Tribunal on 10 December 2022.

Reasons and Decision

47. There was no agreed list of issues. Each party submitted its own. It was our view that there was little to choose between them in terms of substance. We adopted the following as the issues for us to consider:

Jurisdictional issues

Limitation

Just and equitable (discrimination) (s.123 EqA)

- 1) *Were the Claimant's claims for claims for direct disability discrimination, discrimination arising from disability, and failure to make reasonable adjustments were presented within the applicable time limits under the Equality Act 2010? (s.123 EqA)?*
- 2) *The Claimant specifically relies on the 46 job applications submitted by the Claimant from 12 April 2018 onwards.*
- 3) *Do any of the complaints constitute conduct extending over a period?*

- 4) *If so, was the claim presented within the relevant time limit from the end of that period?*
- 5) *If not, was the claim submitted within such other period as the tribunal thinks just and equitable?*

Direct disability discrimination (s.13 EqA)

6) *Did the Respondent subject the Claimant to the following treatment:*

a) *Failing to put the Claimant forward for the positions he applied for, compared to a non-disabled hypothetical comparator in materially the same circumstances.*

7) *If so, did that treatment amount to less favourable treatment than would have been afforded to a hypothetical comparator in materially the same circumstances?*

8) *If so, was the less favourable treatment because of disability? 89558206-1 Disabled status (s.6 EqA)*

9) *Did the Claimant, at the relevant time, have a physical or mental impairment that had a substantial and long-term adverse effect on the Claimant's ability to carry out normal day-to-day activities? The Respondent accepts that the Claimant's ADHD and Dyspraxia amount to disabilities.*

Discrimination arising from disability (s.15 EqA)

10) *Did the Respondent know, or could the Respondent reasonably have been expected to know that the Claimant was disabled? The Respondent accepts that the Claimant identified disabilities in the CV's he submitted to the Respondent.*

11) *What is the something relied upon by the Claimant? The Claimant relies on his alleged inability to process and express information in a way that suited the Respondent*

12) *Did the Claimant's alleged inability to process and express information in a way that suited the Respondent arise in consequence of the Claimant's disability?*

13) *If so, did the Respondent treat the Claimant unfavourably because of something arising from the Claimant's disability? The Claimant relies on the following unfavourable treatment: a) the failure to put him forward to clients for positions he had applied for.*

14) *If so, can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim? The Respondent relies on the following legitimate aim:*

a) *only putting the Claimant forward for roles that the Respondent considered he was suitably qualified for.*

Failure to make reasonable adjustments (s.20 EqA) PCP

15) *Did the Respondent apply the following provision, criterion or practice(s) (PCP)?*

a) *requiring the Claimant to apply for roles by submitting a CV.*

16) *If so, did the PCP place the Claimant at a substantial disadvantage in comparison to those who are not disabled?*

17) *What was the substantial disadvantage? The Claimant relies on the following:*

a) *The inability of the Claimant to effectively express himself in writing and/or the inability to adapt his CV to the specific needs of the role[s] applied fo.*

18) *Did the Respondent take such steps as were reasonable to avoid the substantial disadvantage to the Claimant?*

19) *The Claimant submits that the Respondent should have:*

a) *provided him with the essential requirements of the job; and*

b) *allowed oral applications.*

Auxiliary aids

21) *Would the Claimant but for the provision of an auxiliary aid (such as an ability to make oral applications) be put at a substantial disadvantage in comparison with persons who are not disabled?*

22) *If so, did the Respondent take such steps as were reasonable to provide an auxiliary aid?*

Knowledge of disability

23) *Did the Respondent know, or had constructive knowledge such that Respondent would reasonably have been expected to know that:*

a) *the Claimant was disabled; and*

b) the Claimant was likely to be placed at the substantial disadvantage referred to?

48. We began our considerations by looking at the direct discrimination allegations.
49. We applied the guidance set out in the case of *Ladele* above. In our judgment that there was less than prima facie evidence of direct discrimination in this case. It was our view that the sole reason for the rejection of the claimant's job applications was his lack of relevant skills and experience. This is apparent from the correspondence we have seen in the bundle relating to the relevant applications. We also accept the testimony from the respondent's witnesses in this regard, who all seemed honest and straightforward witnesses in this and all other regards. We did not detect any attempt to mislead the Tribunal, or to conceal some other underlying motive for their decision making. Importantly, this aspect of the case was not put to the respondent's witnesses.
50. When asked about this aspect of his case, the claimant conceded that he had seen no evidence of direct discrimination. He based his suspicions on the fact that he had made 47 applications and had often heard nothing further from the respondent. From this, he inferred that either the advert had been withdrawn, or that there was a sinister motive for rejecting his application. We were satisfied that it was much more likely that a failure to hear back was the result of oversight or the volume of applicants for a particular post. We are satisfied that there is insufficient evidence of less favourable treatment on the grounds of the claimant's disability.
51. For the same reasons, we are also of the view that the respondent did not reject the claimant's applications because of something arising from his disability. We have no doubt that the reasons for the rejections were his lack of requisite skills and experience. The claimant may have been closer to what was deemed necessary by the employer in some applications as opposed to others. There is an element of judgment involved when sifting applications. But we are clearly that the basis of the respondent's decision making was ground don the content of his CV, his work history and his list of qualifications and skills, and how these fact were perceived by the various consultants involved in the claimant's applications. We therefore dismiss his claim in relation to section 15 of the Act.
52. This takes us then to the claim under section 20 of the Act, and the duty to make adjustments. Question 15 of the list of issues requires us to decide if the respondent applied a PCP, namely "requiring the claimant to apply for roles but submitting his CV". This is accepted by the respondent.
53. The claimant alleges that this placed him at a substantial disadvantage in that he has an inability to effectively express himself in writing and/or an inability to adapt his CV to the specific needs of the roles for which he applied. Firstly, we have already found that the claimant has problems with

expressing himself in writing. This is apparent from the numerous emails within the bundle. His grammar and spelling are not those one would usually expect of a person educated to PhD level. We are satisfied that this is likely the consequence of his disability.

54. Notwithstanding, we take the view that this must be looked at in context. He is someone who is highly educated, and has taken any number of exams and completed course work, the vast majority of which will have been in writing. He clearly can read although we accept he doesn't do so for leisure purposes. He can run a small business and has personally litigated over 100 claims before the Employment Tribunal in recent years. This requires an ability to understand and express oneself in writing to a relatively high degree. We have seen evidence of this in the present case. He may rely upon word processing software, voice recognition software, and/or AI to assist. However, he still requires an underlying ability to process text, and to express oneself in writing.
55. For this reason, we are satisfied that the requirement to make an application by CV does not place him at a disadvantage as compared to those without a disability. He had a CV at the relevant time. Indeed, he had demonstrated an ability to tailor it on a number of occasions. The requirement of a CV as opposed to a written application form was an advantage to the claimant, because it is was a document which he had had time to finesse, with the help of work coaches, some of which had experience of his particular conditions. He had paid for this advice and support. It was a document which he could have proof read in good time. Those without disabilities will commonly take this sort of advice and assistance.
56. The claimant goes further and suggests that he was disadvantaged because he couldn't provide a bespoke CV for each application. It is our view that the claimant deliberately did not do. He was not prevented from doing so by his condition but by other factors. In particular, we have concluded that this was a question of time management issue and approach. The claimant had decided that he did not need to read the job adverts. He chose not to engage with the requirements set out in clear terms in the job descriptions we have seen in this case. These job descriptions are, in our view, of a conventional nature, in a format whereby the requirements of the post are clearly set out, usually arranged by bullet points. If the claimant has wished to analyse the essential requirements of these posts, he could have done so from the adverts, which we have found usually contained a full job description. It may have taken a little extra time than some, but we are satisfied that he could have processed the adverts in this sense.
57. We take the view that he took this rather surprising approach to job applications in part because of the sheer volume of those made. Making in excess of 2,000 job applications each year leaves little time to dedicate the necessary time to each one. The volume of applications was the result of his rather scattergun approach. In our judgment, he would have been better served to have reduced the volume by being more discerning and targeted in his applications. This would have enabled him to create a bespoke CV,

or to produce a discrete covering letter for partially applications. In either case, he would have been able to address the specific requirements of a post and include any relevant key words. We are satisfied that he would have been capable of doing this, as he had been able to create his CV, which is a well presented and competent example of its genre.

58. It is arguable that his CV had weaknesses in terms of content and the way it was organised. There were several observations about this during the hearing, which was one of the reasons given by Mr Jones in particular for him rejecting his application. However, not all CV' are created equally. There is a skill to a good CV. But this is different to the question of whether the claimant was disadvantaged by having to apply by CV by reason of his disability.
59. For all of this reasons, we are satisfied that the claimant was not substantially disadvantaged.
60. Having made this finding, we are not strictly required to continue on to the question of whether the respondent should have made adjustments. However, for the sake of completeness, we go on to deal with this issue in case the view is taken that we have erred on the question of disadvantage.
61. The claimant suggests that he should have been provided the essential requirement of the posts. As we have already found , these were continued in the job adverts. They were not always labelled "essential requirements". More often they were under a heading "requirements". But this means the same thing. We appreciate that there may be a question of the claimant's conditions causing him to take too literal or inflexible approach to the language used on the job descriptions. But we do not see what the respondent could have done about this. It was explained on numerous occasions to the claimant that the requirements were as set out in the adverts. In addition, the claimant was often sent the job description again by the respondent to no avail. We find that the claimant was often impervious to explanation.
62. He also alleges that he should have been offered oral applications. If one examines the correspondence in the bundle, it is apparent that he was reportedly offered further discussions about his applications, both by the consultants concerned, and Mrs Lawrence. Yet, the claimant never took them up on the offer. Indeed, the offers were rarely even acknowledged. We also note that in a couple of cases (application 47 being the best example), an oral application was arranged. The notes of this are at [206]. The call lasted 40 minutes. However, it ended with the claimant making a complaint about the content of the call. In essence, he was unhappy that the questions asked by Mrs Lawrence had not centred sufficiently on the essential criteria for the role. It is apparent to us, having looked at the notes, and heard testimony from the claimant and Mrs Lawrence about the conversation, that the criticisms were largely unfounded. It is our view that Mrs Lawrence had conducted herself in a genuine and helpful fashion, and that this was not always reflected by the approach of the claimant. The net effect of the call

was that the application was not strengthened above and beyond the information in the CV.

63. The burden is on the claimant to satisfy us that there was an adjustment in respect of the PCP, which might have made some difference to any disadvantage established. In our judgment, he has failed to do so.
64. We have also consider the question of a oral application in the context of it being an auxiliary service. However, in our view it does not materially affect the outcome in this case. The claimant has failed to establish that there was a substantial disadvantage arising out the absence of an oral application, for all of the reasons set out above.
65. Accordingly, we also dismiss the claim of a failure to make adjustments.

66. The claimant is clearly a diligent and industrious man. He is committed to finding work to support his family. We also find that he sees the issues he has raised in this and other claims as something of a crusade, brought on behalf of other neuro-diverse people, and for his young son, who he would like to have a better and safer experience in the job market. We take the view that these are laudable traits. However, it is the Tribunal's view that the claimant does not always channel his energies appropriately, and finds it difficult to implement good advice. With respect, we would invite him to consider these issues going forward.

Employment Judge R Wood

Date: 30 September 2024

Sent to the parties on: 9 October 2024

For the Tribunal Office