



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Skie Howard

**Respondent:** Pullman Rail Limited

**Heard at:** Cardiff ET via video

**On:** 08 January 2025

**Before:** EJ W Brady

## Representation

Claimant: In person

Respondent: Mr Howells (Counsel)

# JUDGMENT

1. At the material time, the Claimant did have a disability as defined by section 6 of the Equality Act 2010.

# REASONS

1. The Claimant was employed by the Respondent as a Semi-Skilled Fitter from 2 October 2023 until his dismissal on 4 March 2024. Early Conciliation started on 17 April 2024 and ended on 29 May 2024. The claim form was presented on 14 June 2024.
2. The Claimant makes claims for Discrimination arising from disability and Failure to make reasonable adjustments.
3. The case was listed today to determine the issue of disability.
4. The material time was confirmed as from 1<sup>st</sup> November 2023 to the date of the dismissal on 4<sup>th</sup> March 2024.

The Issues:

5. The Respondent accepts that the Claimant has impingement syndrome which affects his day-to-day living and continues to affect his day to day living today. (The claimant has produced medical evidence of a fall in November 2024 where he has fractured his wrist as a result, he says, of his mobility difficulties.)
6. The Respondent submits that at the time the decision to dismiss was made, it was not likely that the Claimant's condition would last for 12 months and that therefore it does not satisfy the long-term condition of the 4 stage test.

**Findings of Fact:**

7. In November 2023, the Claimant tripped outside his house which injured his ankle.
8. On 29 November 2023, he attended at his GP surgery and reported pain in his left foot. At that time he had already been referred to orthopaedics, but nothing had come of that referral. He was therefore referred back to orthopaedics by his GP.
9. On 2<sup>nd</sup> January 2024, the Claimant telephoned his GP and it was established that he would see the orthopaedic department in 3 weeks time. He consulted his GP with regard to his ankle pain on 30 January, 5<sup>th</sup> February, 5<sup>th</sup> March, 4<sup>th</sup> April, 10<sup>th</sup> April, 28<sup>th</sup> May, 14 August, 20<sup>th</sup> August, 13<sup>th</sup> September 2024.
10. On 6<sup>th</sup> February 2024, the Claimant was seen by Mr Daniel Partridge who is a podiatrist. In his letter, Mr Partridge states that "X-rays taken today are unremarkable from previous" but says that "the patient has a slight heel valgus which is worse on the left hand side..." He concludes, "Therefore I feel that this patient would benefit from an insole to realign his rear foot. I have sent him to podiatry for this. I have also sent him to the radiology department for a guided injection to the subtalar joint and I will review him in six months to see how he is getting along with these interventions."
11. On 15 February 2024, an occupational health report concluded that "It is not possible to predict (the short or long term prognosis) because every person and injury differs to their response in treatment, he will be reviewed by the podiatrist in six months time and further treatment is expected to be offered if the present treatment does not correct the problem he has".
12. In his evidence today, Mr Howard confirmed the contents of his statement and said that life has now got harder for him since he broke his wrist on 19<sup>th</sup> December 2024, which he explained was a result of the ongoing weakness in his ankle.
13. Mr Howard was asked whether, in March 2024 he thought that the treatment he was going to receive would resolve the problem, Mr Howard said that he was hopeful that it would and that he just wanted to sort itself out and he hoped that it would be resolved before November 2024.
14. Mr Howard was asked whether at the time he was dismissed was there anything to suggest that he would still have problems with his ankle in November 2024? Again, he said that he was hopeful that the condition would resolve, he said that the podiatrist did say that it might not work and that he might need another one or another operation on his ankle.
15. In conclusion, Mr Howard said that he had been hopeful that after he had insoles that the ankle would gradually get better. He had not expected to still be in this position now.

**The Law:**

16. Disability is defined in Section 6 of the Equality Act 2010. It says, "A person has a disability if that person has 'a physical or mental impairment' which has a 'substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities' — S.6(1). The burden of proof is on the claimant to show that he or she satisfies this definition.
17. In *Goodwin v Patent Office* (1999) I.C.R 302 Morrison J held that the following four questions should be answered when determining whether or not a claimant has a disability:
  - a. Did the Claimant have a mental or physical impairment?
  - b. Did the impairment affect the claimant's ability to carry out normal day-to-day activities?
  - c. Was the adverse condition substantial?
  - d. And was the adverse condition long-term?

18. The Respondent accepts that the Claimant had a physical impairment namely impingement syndrome and that the impairment affected his ability to carry out normal day to day activities and was substantial. The issue in this case is whether or not the adverse condition was long term.
19. in [Boyle v SCA Packaging Ltd \(Equality and Human Rights Commission intervening\) 2009 ICR 1056, HL](#) Baroness Hale said that word “likely” simply meant that it is a real possibility in the sense that it “could well happen”.
20. The question of whether the effects of the impairment are likely to last for more than 12 months is an objective test based on all the contemporaneous evidence, not just that before the employer. The Tribunal is not concerned with the employer’s actual or constructive knowledge of the disability.
21. In the Case of Singapore Airlines Ltd the EAT held that an employment judge had erred in having regard to subsequent events when reaching her decision. I was also referred to the case of Richmond Adult Community College v Mcdougall which confirms this point.
22. The burden of proof rests with the Claimant in this case. It is for the Claimant to prove that it is more likely than not that the elements of the 4 stage tests are met.

**Conclusion:**

23. Mr Howard’s own evidence in this case is that he was hopeful that his condition would resolve itself after he received treatment although he says that he was told that it might not. He said that he did not expect to be in this position in 12 months’ time, although the experts had told him that it might happen. The podiatrist’s letter requested a follow up appointment 6 months after the initial appointment. The OH report states that it is difficult to assess the likelihood of the length of time it would take Mr Howard to recover due to the fact that people react differently to treatments. It also states that further treatment is expected to be offered if the treatment does not work.
24. There is evidence to show that Mr Howard’s condition is ongoing, but I am unable to take that into account in my decision making and I must consider objectively the evidence that was available at the time the decision was made to dismiss in March 2024.
25. I conclude that in March 2024, Mr Howard’s treatment was in its very early stages. I note that the NHS podiatrist had requested a follow up appointment in 6 months time. He was not discharged by the podiatrist or expected to be referred by his GP again if the problem recurred. The podiatrist asked to see him again in 6 months’ time for a follow up appointment. The Occupational Health report says that further treatment would be expected if the treatment does not work, which is again indicative of an expectation that the problem may well continue.
26. Mr Howard’s evidence is that he was hopeful that the treatment would be successful and that he would have recovered by November 2024. I find that this is a natural reaction for someone who has incurred an injury. Of course Mr Howard hoped that he would get better quickly, but objectively the medical evidence is that the disability “could well” last for 6 months after the first appointment and as the OH report says, further treatment then is likely, which would take Mr Howard beyond the next 6 months period.
27. I therefore find that at the time of the dismissal in March 2024, there was a real possibility that the Claimant’s injury could well have lasted for a period of 12 months.

Date: 8 January 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

16 January 2025

Adam Holborn  
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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