



EMPLOYMENT TRIBUNALS

Claimant: Mr S Richardson
Respondent: LKQ Group (UK) Limited

Heard at: Reading Employment Tribunal
On: 16 January 2025
Before:
Employment Judge: A Gumbiti-Zimuto
Members: C M Baggs
F Wright

Representation

Claimant: In person
Respondent: Mr Jenkins, counsel

JUDGMENT having been sent to the parties on **28 January 2025** and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

1. In a claim form presented on the 23 January 2024 the claimant made a complaint of unfair dismissal and disability discrimination. The claims and issues were set out in a record of preliminary hearing on 7 October 2024 by Employment Judge Anstis, who recorded the following: *“the only claim remaining for determination was the claim of disability discrimination. In discussion with the claimant, this was identified as being a claim of discrimination arising from disability: that is, in consequence of his disability of depression and/or a stroke he submitted a sick note on 10 October 2023 which in turn caused the respondent to revisit its records of his absence in August and September and conclude that he owed them money.”*
2. The claimant gave evidence in support of his own case and Mr Christopher Michael Middlecoate gave evidence in support of the respondent’s case. The Tribunal was supplied with a trial bundle of documents and a supplementary bundle of documents. We made the following findings of fact.
3. The claimant had been employed by the respondent on two previous occasions prior to the commencement of his final period of employment. He had worked together with a Mr Middlecote who at one time worked alongside him but, at the time that we are concerned with these events, was working as his Operations

Manager. The claimant's latter employment commenced on 5 November 2019 and the claimant was employed initially as a Warehouse Supervisor but, at the time of the relevant events that we are concerned with, was working as a Sales Advisor.

4. From 1 August 2020 Mr Middlecote was promoted to the role of Operations Manager and received a further promotion to Branch Manager on 17 January 2022.
5. The evidence before us suggests that the claimant and Mr Middlecote had a good working relationship. Mr Middlecote's duties included making a record when an employee was absent from work by recording it on the respondent's internal HRIS system. Making a recording of absence on the internal system allows payroll to access that information in order to ensure that any employee was paid correctly. Absence should properly be recorded at the time of the absence or at the very earliest opportunity.
6. In 2023 the respondent replaced its HRIS system with a new system called Connect. The old system closed At the end of July 2023. There was a period of time when sickness absence could still be recorded on the old system after July 2023 and before the new system became live on 12 September 2023. Between 18 August and 12 September 2023 any absence needed to be recorded by branch managers using an Excel spreadsheet which is known as a Blackout Form. The spreadsheets would then be processed by the HR team once Connect was in place.
7. Sadly, for the claimant, his mother died in August 2023 and as a result he took compassionate leave between 21 August and 1 September 2023. The respondent's Bereavement Leave Policy allows for one weeks paid leave with a further weeks unpaid leave. With the manager's discretion the second week can also be paid. Mr Middlecote agreed that the claimant could take two weeks' paid bereavement leave. As the claimant was on paid bereavement leave Mr Middlecote states that he did not have to complete the Blackout form to record the claimant's absence as there would be no difference in relation to his pay for the month of August. The claimant received his August salary on 31 August and was paid the normal amount. The claimant did not return to work on Monday 4 September as anticipated. He remained off work on unpaid compassionate leave for a further week.
8. On 11 September 2023, the claimant provided the respondent with a fit note from his GP which signed him off work until 25 September. That referred to the claimant being not fit for work because of bereavement.
9. Mr Middlecote did not enter any of the claimant's absences on the Blackout form. His unchallenged evidence was that he did not do so in respect of any other member of staff at this time. However, at the time the claimant was the only individual who had sickness absence and there was no request for annual leave made by any other employee. The Connect system went live on 12 September.
10. The claimant did not return to work on Tuesday 26 September. He remained off work on unpaid compassionate leave for two days. He returned to work on 28 September and also worked on 29 September.

11. There is a dispute between the claimant and Mr Middlecote about the phone conversation on 19 September. During this call, the claimant's recollection is that Mr Middlecote told him that he was going to be paid in full for August and September. Mr Middlecote's recollection is that he agreed to full pay for the two weeks in September.
12. The claimant received his September salary payment on 29 September 2023. He received his usual salary payment. According to the respondent this was an error because he had been on unpaid bereavement leave during all but two days of September 2023. This was the correct payment from the claimant's point of view because it chimed with the agreement that he thought he had with Mr Middlecote for full pay for August.
13. Mr Middlecote, while acknowledging that the claimant had provided a GP fit note for two weeks in September, however, says that he did not believe that this should be deemed to be sick leave which would have attracted sick pay. The sick note simply stated "bereavement," so he did not believe that the claimant was sick but was dealing with the loss of his mother. Mr Middlecote thus concluded that the claimant's absence should be unpaid bereavement leave.
14. This case is not about whether this characterisation of this absence was correct. We doubt that it was. But it is otiose in this case as a complaint about pay as the claimant has been repaid the money for this period in any event, and the way that the claimant has characterised his claim nothing turns on this action of Mr Middlecote.
15. The respondent's perspective is that the claimant incorrectly received full pay during September 2023 because Mr Middlecote had not recorded his absence either on the Blackout form or on Connect once it became live. Mr Middlecote did not record anything on Connect until 10 October 2023.
16. On 2 and 3 October the claimant was on annual leave. The claimant returned to work on 4 October. The claimant informed the respondent that he had had a stroke and that he had found out that he had previously had a stroke in 2018.
17. On 5 October, the claimant began to feel unwell and was taken to a community walk-in centre. The claimant was subsequently signed off sick on 10 October 2023 and the claimant provided the respondent with a fit note from his GP that signed him off work between 9 and 23 October because of having a stroke. At the time the claimant told the respondent that hopefully he would be able to return to work after two weeks.
18. It was the claimant's email sent on 10 October that reminded Mr Middlecote that he needed to record the claimant's absence on Connect as he had not done so for the period since September. Mr Middlecote thus recorded the claimant's absences on Connect at that time as 20 days of unpaid compassionate leave between 4 and 27 September, 3 days of sickness between 5 and 7 October and 10 days of sickness between 11 and 23 October. This was the first time that Mr Middlecote had entered anything into Connect. Mr Middlecote denies that he made the entry of the claimant's absence into Connect following receipt of the claimant's fit note in order to treat him unfavorably or because of any disability. He says that he entered the claimant's absence because it needed to be recorded and he had not done so earlier as he was required to. What Mr

Middlecote says is that he was unaware that the claimant had a disability. While the claimant had had a stroke, Mr Middlecote says that he had no knowledge of how this had impacted on him or whether it was determined to be a disability and, at the time, it was anticipated that his absence from work, ie, any impaired suffered was not going to last more than a couple of weeks.

19. There was a telephone conversation between the clamant and Mr Middlecote on 10 October during which Mr Middlecote states that he informed the claimant that the claimant had been seen at a local annual funfair and that his colleagues were a bit frustrated that they were picking up his work whilst he was off sick, and had then seen him at the funfair which they felt demonstrated that he was not actually unwell. During this call, the claimant says that Mr Middlecote spoke to him in an aggressive manner saying something along the lines of, "You've left me in a world of pain" and that he would now have to let HR know of the claimant's absences as it had been a prolonged period now. Mr Middlecote says that, during the course of this conversation, he did not swear at the claimant, and he was not aggressive.
20. The claimant informed the respondent on 17 October that he was continuing to be unwell with various symptoms and at that time he did not consider that he would be returning to work anytime soon. The claimant later provided the respondents with a fit note that signed him off work between 22 October and 5 November 2023. This gave the claimant's absence as being due to stroke and depression.
21. The claimant should have received his October salary payment on 31 October. However, as a result of his absence from work during September 2023 and October, this resulted in a deduction for the claimant of more than his usual salary payment. Regrettably, Mr Middlecote did not inform the claimant that there would be any deductions to his salary payment; the payroll office did not inform the claimant that there should be a deduction to his salary in October, and on 31 October the claimant spoke to Mr Middlecote asking why he had not been paid. At that point Mr Middlecote told him why it was. The claimant subsequently contacted HR about this expressing his complaints to them.
22. Mr Middlecote, together with a Matthew Hutton, on 4 November, discussed the claimant's absences and reviewed the entries that had been made by Mr Middlecote on 10 October. Following that discussion, Mr Middlecote made some further entries of absences in the Connect system This was that between 21 and 25 August, five days paid compassionate leave; between 28 August and 1 September, 4 days paid compassionate leave and there were some further absences recorded on the Connect system which related to periods following the claimant's absence in October.
23. The claimant raised a complaint about the way that Mr Middlecote had dealt with his absences. This was initially looked at informally. Subsequently there was a formal grievance and an appeal against the grievance outcome.
24. In 2024 the claimant received a payment amounting to one months salary as a gesture of goodwill from the respondent. That was made in relation to the deduction of salary that had been made in September 2023.
25. We acknowledge the care and detail which has been provided by the claimant in

drafting his witness statement. He has addressed a wide range of matters and gone into a lot of the background. However, it is important for us to emphasise that in addressing this case we have regard to the limited scope of our enquiry which is defined by Judge Anstis at the preliminary hearing on 7 October where in the case summary at paragraph 5 Judge Anstis records that “The only claim remaining for determination was the claim of disability discrimination.” In discussion with the claimant this was identified as being the claim of discrimination arising from disability, that is, in consequence of his disability of depression and/or stroke. He submitted a sick note on 10 October 2023 which in turn caused the respondent to revisit its records of his absence in August and September and conclude that he owed them money.

26. The matters in dispute here appear to be whether the claimant was disabled at the relevant time and whether the respondent, in the person of Mr Middlecote, was aware of the claimant’s disability. It is important again to note that the respondent accepts that the claimant is a disabled person by reason of depression and stroke. What is not accepted is that, at the relevant time, it was known that he was a disabled person by reason of these matters.
27. At the relevant time the respondent states that it did not know that he was disabled by reason of a stroke. It is not clear that the claimant’s condition at the time was necessarily going to be long term. There has not been extensive medical evidence about the impact on the claimant. What there has been is evidence from the witnesses which indicates that, at the time that the respondent first became aware of the claimant’s stroke, the expectation was that the claimant would return to work in two weeks. The claimant himself thought that he would return in two weeks and Mr Middlecote thought that he would return in two weeks. This knowledge at that time is important because that is the point when the discriminatory act is alleged to have occurred. It seems to the Tribunal that it is not possible to impute to the respondent had any actual or constructive knowledge that the claimant was a disabled person at the relevant time.
28. In respect of the stroke, the claimant’s condition had not lasted 12 months and was not thought to be likely to last 12 months at the time. The claimant himself had indicated that, hopefully, he would be back to work within two weeks.
29. In respect of the depression, the claimant’s condition may or may not have amounted to a disability at the relevant time and Mr Middlecote was not aware of this at the time. Mr Middlecote thought that the claimant was suffering from the effects of having to go through a difficult time with his mother’s death. This does not amount to knowledge of a disability arising from depression and, in our view, there is not the knowledge required in order to impute constructive knowledge on the part of Mr Middlecote and, therefore, the respondent in relation to depression.
30. The conclusion of the tribunal is that Mr Middlecote, through whom the respondent is acting, did not know that the claimant was disabled at the relevant time and further, he could not be taken to have had constructive knowledge of the claimant’s disability at the relevant time.
31. There is a dispute between the parties as to what was said on 19 September, and it is possible that the words that were used may well have allowed the claimant to think that he was going to be paid for August and September.

However, the claimant's case is essentially that, once the respondent became aware of the claimant's absences, and that they were going to continue due to stroke, that that caused Mr Middlecote to make the entry in Connect which resulted in the reduction in his pay and this was in consequence of something arising from disability, namely his absence from work.

32. It seems to the Tribunal that there is an element of punishment essentially in what the claimant is alleging. The respondent however states that the reason is as explained by Mr Middlecote; that he failed to do his duty as required by completing the record on Connect as he should have done at the time that he did, and the claimant's report to him on 10 October prompted him into acting as he should have done earlier. What the motivation was for what Mr Middlecote did is not evidenced beyond the explanation which has been given by Mr Middlecote himself.
33. His explanation is credible and convincing. We note that it does not show him in a particularly good light because of this. We consider that it lends some credibility to what he is saying. On the other hand, the claimant's version of why his happened is really little more than an assertion. There is, of course, an inevitable connection between the claimant's absences and his disability. The absence was caused by the disability, and it had to be recorded. This was relevant for the proper calculation of the claimant's pay. The simple act of making the entry in Connect is not, in those circumstances, evidence of unfavourable treatment arising from something in consequence of the disability. In any event, even if it was, we consider that the recording of the claimant's absence, and the reason for it, which is relevant to proper calculation of the claimant's pay, is a proportionate and legitimate act for the purposes of s.15. It is legitimate and proportionate to keep proper and accurate records as to an employee's pay entitlement.
34. For those reasons we do not consider that the claimant's claim in respect of discrimination arising from disability is well founded and is therefore dismissed.
35. We briefly turn to the question of whether there ought to be amendment to allow the claimant to address the question whether there was a failure to make reasonable adjustments in this case. The alleged reasonable adjustments relate to recording of the grievance meeting. That complaint is not articulated in the claim form. It is not clear whether the event itself had occurred at the time the claim form was presented. In any event, it is not articulated in the way that the witness statement has been scripted. There is reference to it in the bundle of documents which the claimant has produced but, in order to find it, that requires delving into the bundle and identifying an event had occurred. This is a case that would be impossible for the respondent to answer in the way that it has been presented. We think it is a paradigm example of an application for amendment that should not be allowed. In any event, even if we had allowed the amendment, on the basis that we have now heard all the evidence that is to be heard in this case, such a claim would, in any event, have had to be dismissed because there has been no evidence produced in order to support such a claim.
36. For all those reasons, the claimant's complaints are dismissed and the application to amend the claim is refused.

Approved by:

Employment Judge Gumbiti-Zimuto

24 February 2025

SENT TO THE PARTIES ON

28 February 2025

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FOR THE TRIBUNAL OFFICE