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EMPLOYMENT TRIBUNALS (SCOTLAND)
Case number: 8000503/2024

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**Final Hearing held in Edinburgh and
on the Cloud Video Platform
on 3 and 4 March 2025**

Employment Judge A Jones

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Mr D Challenger

**Claimant
In person**

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Panton McLeod Ltd

**Respondent
Represented by
Mr Glass, solicitor**

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JUDGMENT

The claimant's claims fail and are dismissed in their entirety.

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REASONS

Introduction

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1. The claimant lodged a claim on 19 April 2024 claiming that he had been discriminated against on grounds of disability. The respondent resisted the claims and did not accept that the claimant was a disabled person at the material time and in any event it did not and could not have known that he was a disabled person.
2. A preliminary hearing took place on 11 November 2024 which determined that the claimant was a person possessing the protected characteristic of disability

in terms of section 6 Equality Act 2010 (the EqA”) at the material time, being between 8 and 26 January 2024 by reason of the condition of Autism Spectrum Disorder. The Tribunal also found that the condition of ADHD was not a disability at the material time. The case was then listed for a final hearing.

- 5 3. The claimant had been reminded at a preliminary hearing for the purposes of case management that any final hearing would be conducted in person. It was suggested on the basis that he lived in Wales that he may wish to make an application for his claim to be transferred to another Tribunal nearer his home. No such application was made. On the morning of the final hearing, the
- 10 claimant contacted the administration and requested a link to allow him to join the hearing remotely. That was provided and prior to evidence being led in the hearing, I asked the claimant to explain why he had not appeared in person despite him being advised that this hearing would be conducted in person. The claimant explained that he had been homeless and before Christmas had
- 15 obtained accommodation in a homeless shelter. He had not appreciated that the hearing would be in person and had no money to travel to Scotland.
4. The respondent’s position was that the claim should be struck out due to the claimant’s non-attendance in person. I refused that application on the basis that it was not proportionate given that the claimant had appeared albeit remotely. I
- 20 asked whether the respondent would prefer to proceed with the claimant appearing remotely or have an adjournment until the claimant could appear in person. The respondent indicated that it would prefer to continue with the claimant appearing remotely.
5. The claimant therefore gave evidence remotely. The respondent led evidence
- 25 in person from Mr Panton the Managing Director of the respondent and remotely from Ms Williams who had been a colleague of the claimant. On the second day of the hearing, the Tribunal heard evidence in person from Mr Fraser who had taken the decision to dismiss the claimant and Ms Gilbertson who had been the claimant’s line manager. A joint bundle of documents was
- 30 lodged and parties made submissions at the conclusion of the hearing. Both parties helpfully provided a copy of their submissions in writing.

Issues to be determined

6. The Tribunal was required to determine the following issues:
- 5 i. Was the claimant treated less favourably, in that he was dismissed, because of disability, and
 - ii. Had the claimant been subjected to harassment related to disability, by either Ms Williams and/or Ms Gilbertson in relation to comments allegedly made by them.
 - 10 iii. If the claimant succeeded in any of his claims, what if any compensation should be awarded to him.

Findings in fact

7. Having listened to the evidence, considered the documentary evidence to
15 which reference was made and the submissions of the parties, the Tribunal found the following material facts to have been established.
8. The respondent is a company which operates throughout the UK and the Republic of Ireland carrying out enhanced chemical cleaning and robotic inspections for the water industry. Its main office is at Selkirk but it has another
20 operation at Ebbw Vale in Wales.
9. The claimant applied for the role of Operation Technician with the respondent through the Indeed online platform around November 2023.
10. A preliminary phone call was made to assess the claimant's suitability for the role around November 2023 by Ms Williams, who is a SHEQ Support Team
25 Leader based at the Ebbw Vale office. Ms Williams wished to clarify that the claimant had a full driver's licence and would be able to drive a company van. The claimant indicated that he was currently working as a delivery driver and therefore met these criteria. He did not mention any points he had on his license or a driving related conviction.
- 30 11. A further preliminary phone call took place on 23 November between the claimant and Mr Panton, the respondent's Managing Director who was running the recruitment exercise for the role. Mr Panton was impressed by the claimant and was of the view that his application should proceed to the next stage. Mr

Panton discussed with the claimant that the claimant was autistic and the claimant had indicated that he took medication for the condition and that it would not be a barrier to his employment. The claimant also told Mr Panton about his hobbies including water sports and fitness training.

- 5 12. A further interview took place remotely by video on Teams on 1 December 2023 at which the claimant, Mr Panton and Ms Kennedy, the Operations Manager were present. The claimant was again impressive at interview and discussed the challenges he had faced due the cognitive impairment of autism. Both Mr Panton and Ms Kennedy had no hesitation in appointing the claimant
- 10 to the role which had been advertised.
13. The job advert to which the claimant had responded had made reference to the fact that the respondent operated nationwide, and that the role would require a regular amount of travel. The claimant had confirmed that he had a driving licence. He did not volunteer to the respondent that he had 10 points on his
- 15 licence and had been convicted of a drink driving related offence the previous year.
14. The claimant was appointed to the role of Operations Technician based at the Ebbw Vale premises at an annual of salary of £26,923 and commenced work on 8 January.
- 20 15. The claimant was required to complete a driver's declaration form on the first day of his employment. He disclosed on that form that he had received a "DR40" conviction on 12 March 2023, had 10 points on his licence and had received a £180 fine.
16. The claimant was due to attend a three-day first aid course operated by the
- 25 Red Cross in Cardiff between 17 and 19 January.
17. The claimant contacted Ms Gilbertson on 19 January and informed her that he had not been able to attend the course that day as his car had been impounded by the police.
18. The respondent was informed by the training provider by email on 19 January
- 30 that the claimant had not attend on 18 or 19 January and another course was booked for him.

19. The claimant completed a timesheet indicating that he had attended the first aid training course on 17, 18 and 19 January and an expenses form where he claimed mileage for travel to the training on 17 and 18 January.
20. On 22 January 2024 the respondent's insurance brokers sent an email to the respondent's Finance Director informing them that the insurers had declined to offer any terms to insure the claimant to drive the respondent's vehicles.
21. That information was subsequently shared by email with the respondent's directors that evening. The respondent had been informed that the position would not be reviewed for a further 12-month period.
22. The directors then engaged in email correspondence that evening regarding the matter. Mr Panton sent an email which stated "Frankly – if it is a significant problem to operate with that then we should just cut to the chase and terminate early based on the fact that we need them to drive. Although that probably implicated Jaysen too." Mr Fraser responded, stating. "Just to add to the story – it turns out the police took his car from him on the way to the first aid course. This course has now been rebooked by Andrea. No road tax – although he says as he is a blue badge holder he doesn't pay road tax (which is true if he has one) and it was a mix up. Now I'm not sure if that's a cover story or a genuine mistake by the police. I haven't heard if he's got it back but will ask tomorrow. Not driving is a problem generally. The only saving grace for Jaysen is he told us during interview about the crash after passing his test." At this time Mr Fraser decided that the claimant should be dismissed.
23. On 23 January, Ms Williams sent an email to a number of staff indicating that the claimant was not to drive any of the company's vehicles. Ms Williams had informed the claimant in advance that she intended to send that email as she had been advised to do put this in writing.
24. Ms Gilbertson tried to contact Mr Thomas and Mr Martin who commenced employment at the same time as the claimant and had been due to attend the first aid training with the claimant to ask whether the claimant had been present on 18 January. Mr Thomas indicated that the claimant was not present on 18 January. Mr Martin refused to speak to Ms Gilbertson regarding the matter.
25. The respondent had also employed a Mr Jayson Young at the same time as the claimant. The claimant, Mr Thomas and Mr Martin were all recruited to work

in the Welsh operation and Mr Young was recruited to work in the Scottish operation. Mr Young was 19 years old. When the respondent sought to obtain insurance cover for him to drive its vehicles, it was informed that while insurance would be provided, an additional premium of £2,240 would be required. The respondent decided not to take up this offer and Mr Young was not insured to drive the respondent's vehicles until August 2024 when the insurance provided agreed to provide cover for him without any additional premium.

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26. The respondent's operation in Wales primarily carried out robotic inspection services of clients' water facilities. This required teams of two to work together. The clients' facilities were generally located in rural areas some distance from the respondent's office and in areas where there was no public transport. There was a requirement for the teams to share the driving to and from the premises, to ensure that the operatives were as alert as possible when carrying out duties which required high levels of concentration.
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27. The respondent's operations in Scotland were much larger than that in Wales and primarily involved operatives working in teams of three and carrying out manual work and inspections on the water facilities of clients. While the client premises were also predominately remote in nature, as there were teams of three, there was more scope for one operative not to drive during their shift.
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28. Mr Young was an inexperienced worker, and the respondent wished to ensure that he had sufficient on the job training in carrying out duties required of him before he was required to carry out all the duties associated with the role. Mr Young did not drive any company vehicles until August 2024. The claimant has significant experience of the working environment and had previously worked at BT Openreach.
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29. On 25 January, Ms Gilbertson provided Mr Fraser with a report on the investigations she had carried out in relation to the claimant's attendance at the first aid course. The report recommended that a disciplinary hearing be held in respect of the claimant in relation his apparent non- attendance on 18 January and his claim for hours and mileage on 18 and 19 January.
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30. On 25 January the claimant left work early due to a personal issue which required him to contact his mental health support worker.
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31. The claimant was asked to attend a Teams meeting by video on 26 January.

The claimant had not attended work that day and joined the meeting remotely from home. Mr Fraser had asked Mr Phelps, who was based in the Welsh office to attend to provide support to the claimant, as Mr Fraser had anticipated that the claimant would attend the meeting from the respondent's office. Mr Fraser and Ms Gilbertson also attended the meeting with Mr Phelps. Mr Fraser informed the claimant that his employment was to be terminated because it had not been possible to obtain insurance cover for him to drive the company's vehicles. Mr Fraser then said that in addition he had received a report regarding allegations that the claimant had not attended work on a day the respondent had understood he had attended and had claimed hours and mileage for occasions when he had not attended work. At that point the claimant became angry, told Mr Fraser that he would see him in court and terminated the call. The claimant was paid a week's pay in lieu of notice. The position was set out in writing to the claimant and accurately reflected the respondent's reason for dismissal of the claimant.

32. At no time during his employment did Ms Williams or Ms Gilbertson ever refer to the claimant as a 'mong' or 'mongo' or refer to him as 'retarded'.

33. The claimant has not obtained alternative employment as he has not had a permanent address and has suffered from mental health difficulties since the termination of his employment by the respondent.

Observations on the evidence

34. The Tribunal did not find the claimant to be a credible or reliable witness. While the Tribunal appreciated that the claimant is autistic and has ADHD, it still found his evidence to be confusing, exaggerated and contradictory. In particular, he made extravagant claims about allegations regarding what had been said by Ms Williams and Ms Gilbertson to him, yet did not cross examine either of them on these allegations. The claimant continued to be argumentative under cross examination despite a number of reminders to answer questions. The claimant was clearly an intelligent individual and the Tribunal appreciated that he has been through difficult times recently. However,

where his evidence conflicted with that of the respondent's witnesses, the Tribunal preferred that of the respondent's witnesses.

35. The respondent's witnesses all gave their evidence in a straightforward manner. It was clear to the Tribunal that the allegations which had been made
5 against Ms Williams and Ms Gilbertson had caused them considerable upset.

Relevant law

36. Section 6 Equality Act 2010 ('EqA') defines the circumstances in which an individual will have the protected characteristic of disability.

10 37. Section 13 EqA sets out the basis on which a person will be subjected to direct discrimination. Section 23 EqA sets out the basis on which a comparison should be made in order to determine whether there has been unfavourable treatment in between a claimant and a person who does not have the protected characteristic of that claimant. Section 26 EqA sets out the circumstances in
15 which a person will be subjected to harassment for the purposes of EqA.

Discussion and decision

Was the claimant discriminated against because of his disability in relation to his dismissal?

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38. The Tribunal first considered whether the claimant had been dismissed because of the protected characteristic of disability in that the claimant is autistic. The claimant's position was that he had asked for reasonable adjustments to his role and was dismissed the next day. The claimant did not
25 advance any claim in relation to a failure to make reasonable adjustments. He did not give any evidence about what adjustments he said he had asked for. The respondent's evidence was that the claimant had been asked prior to the commencement of his employment whether he required any reasonable adjustments and indicated that he did not. Their evidence was that the subject
30 was never again raised. The Tribunal accepted the evidence of the respondent's witnesses.

39. The respondent was aware prior to appointing the claimant that he was autistic.

The respondent had formed the view that the claimant was an impressive candidate given the difficulties he had overcome and how his approach to problem solving was influenced by his neurodivergent condition. The

5 respondent viewed this as an advantage. There was no evidence to suggest that the claimant had been dismissed for any reason related to disability. The stated reason for dismissal was that the respondent had been unable to obtain insurance cover for him to drive its vehicles. The Tribunal accepted that the work the claimant would be required to carry out was generally carried out in

10 teams of two and that both members of the team would be expected to drive to or from client premises. The team in Wales was a small team and carried out different work to that of the team in Scotland which was larger and provided more scope for individuals to carry out work without driving because they would be in a team of three rather than two.

15 40. The claimant sought to compare himself to Mr Young. The position of Mr Young differed in several material respects. Mr Young was 19 years old and relatively new to the world of work. The claimant was 41 years old at the time of his appointment and had significant experience in the workplace. The respondent had been unable to obtain insurance for the claimant to drive its vehicles and

20 that position could not be revisited for at least 12 months with no guarantee of insurance being provided at that time. Insurance cover was offered in respect of Mr Young albeit at a premium. Mr Young would be expected to work in teams of three whereas the claimant would be expected to work in teams of two. Mr Young was based in Scotland and the claimant was based in Wales.

25 The work carried out from each location was materially different.

41. There were therefore several material differences between the circumstances of the claimant and those of Mr Young and therefore no valid comparison can be made between them.

42. In any event, the Tribunal was satisfied that the reason for the claimant's

30 dismissal was the inability to provide insurance cover for him, and nothing whatsoever to do with his autism.

Was the claimant subject to harassment?

43. The claimant made allegations that Ms Williams and Ms Gilbertson used derogatory and offensive terms when speaking about him. The evidence of Ms Williams, who was based in Wales and Ms Gilbertson who was based in Scotland and both of whom worked in different areas of the business was that they rarely spoke to each other. Their evidence was that while there was a meeting regarding equipment for the claimant, there were others present at the meeting and the discussion was about what PPE equipment was required for all the new starts. The Tribunal accepted their evidence in its entirety.

44. The claimant was out at training for much of the period of his employment with the respondent. There were therefore few occasions when the claimant was in the office with Ms Williams.

45. Regrettably, the Tribunal concluded that the claimant had made up the allegations against Ms Williams and Ms Gilbertson to bolster a case in relation to his dismissal. The Tribunal accepted that neither Ms Williams nor Ms Gilbertson had ever used the words suggested by the claimant in relation to him and that the allegations made by the claimant were not true.

46. The claimant was therefore not harassed in terms of section 26 Equality Act.

47. The claimant's claims therefore fall to be dismissed in their entirety.

**Employment Judge: A Jones
Entered in register: 11 March 2025
and copied to parties**