



EMPLOYMENT TRIBUNALS

Claimant: Darren Anthony

Respondent: Talk 4 Business Ltd

Heard at: Croydon by CVP

On: 7 & 8 May 2025

Before: Employment Judge Liz Ord
Tribunal Member Steve Corkerton
Tribunal Member Sameah Khawaja

Representation:

Claimant: Not attending
Respondent: Ian Redwood (Managing Director of respondent)

JUDGMENT

1. The claimant was not disabled at the relevant time for the purposes of section 6 of the Equality Act 2010.
2. The complaint of direct disability discrimination is dismissed.
3. The complaint of discrimination arising from disability is dismissed.
4. The complaint of age discrimination is dismissed.
5. The complaint of unauthorised deduction from wages is dismissed.
6. The complaint of failure to pay accrued holiday pay is dismissed.
7. For the avoidance of doubt, all claims in this case are dismissed.

REASONS

The Complaints and Issues

1. The claimant complains of:
 - 1.1. Direct disability discrimination
 - 1.2. Discrimination arising from disability
 - 1.3. Direct age discrimination
 - 1.4. Unauthorised deduction from wages
 - 1.5. Failure to pay accrued holiday pay
2. The issues for the tribunal are set out in the attached Annex.

Evidence

3. The tribunal had before it a documents bundle of 82 pages, a statement from Ian Redwood (respondent's managing director) and a disability impact statement from the claimant.
4. On behalf of the respondent we heard evidence on oath from Ian Redwood.
5. Number references in brackets are to the documents bundle.
6. Only findings of fact relevant to the issues, and those necessary for the tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The tribunal has not referred to every document it read and/or was taken to in the findings below, but that does not mean it was not considered if the tribunal was taken to the document in evidence or as part of a reading list.

Preliminaries

7. The claimant did not attend this full merits hearing. He emailed the tribunal to say he had not been given adequate notice. However, he was sent a notice of hearing on 9.1.24, attended a case management hearing on 15.3.24 where the dates of the full merits hearing were confirmed, and was sent the case management order on 22.3.24.
8. The tribunal e-mailed the claimant on the first day of the full merits hearing, reminding him of the notices of hearing he had been sent, and encouraging him to attend. He was warned of the potential consequences of non-attendance.
9. The claimant emailed back saying he was unwell and asked that judgment be rendered in his absence.

10. On the basis of this correspondence, the tribunal heard the case in the claimant's absence.

The Law

11. **Discrimination** - The relevant legislation is contained in the **Equality Act 2010 (EqA)**

12. **Meaning of disability**

Section 6(1) EqA

provides that a person (P) has a disability if:

- (a) P has a physical or mental impairment, and
- (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

Section 212 EqA - General interpretation

- (1) In this Act-
Substantial means more than minor or trivial.

Schedule 1 Part 1 of the EqA sets out supplementary provisions. It provides:

- 1. ...
- 2. Long-term effects
 - (1) The effect of an impairment is long-term if-
 - (a) It has lasted for at least 12 months,
 - (b) It is likely to last for at least 12 months, or
 - (c) It is likely to last for the rest of the life of the person affected.
 - (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
- 3. ...
- 4. ...
- 5. Effect of medical treatment
 - (1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if-
 - a) measures are being taken to treat or correct it, and
 - b) but for that, it would be likely to have that effect
 - (2) "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.

In *SCA Packaging Ltd v Boyle* [2009] UKHL 37, it was held that "likely" means "could well happen".

The standard of proof is the balance of probabilities. In determining whether a person is disabled, the court should apply the appropriate test to the claimant's

condition at the date of the alleged discriminatory act, not at the date of the hearing.

13. Section 13 EqA - 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.

There are two parts to consider, namely, whether the employer:

- Treated the person less favourably than it treated others, and
- Treated the person in that way because of a protected characteristic.

14. Section 23 EqA comparison by reference to circumstances - provides:

(1) "On a comparison of cases for the purposes of section 13, 14 or 19, there must be no material difference between the circumstances relating to each case."

15. Section 15 EqA – 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.

16. Unauthorised Deduction from Wages - Pursuant to section 13(1) of the Employment Rights Act 1996 (ERA):

" An employer shall not make a deduction from wages of a worker employed by him unless -

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction."

Section 13(3) ERA says:

"Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

Findings of Fact

Employment with the respondent

17. The claimant was recruited by the respondent for the role of Business Development Manager. The interview process involved several stages. He

completed a medical questionnaire in which he was asked whether he had a disability and he answered no (81).

18. At an interview in June 2023, the claimant alleged that Ian Redwood (Managing Director) asked him why he was applying for the job and that, having looked at his CV, said he must surely be thinking about retirement.
19. Mr Redwood's evidence was that they were discussing motivation in a convivial way. Mr Redwood made a comment to the effect that, given the claimant's previous success and work in senior roles, others in his position might be planning retirement rather than changing career.
20. The claimant was offered the position and signed the employment contract on 3.7.23 (51-57). The offer was confirmed by Ian Redwood at interview on 17.7.23, during which Mr Redwood talked about the company's values and how the claimant's experience could assist the respondent company.
21. Claimant was 49 years old at the time of his employment with the respondent. The people who started with him were younger and around the age of 25 years to 35 years. Mr Redwood gave evidence that the age range within the company was from around 17-18 years for apprentices going up to age 60 years. We accept his evidence.
22. The claimant started his employment on 24.7.23. He underwent training for a full week. Then on 31.7.23 he failed to turn up for work for medical reasons.
23. The claimant sent an email on 31.7.23 to Mr Redwood (78-79), who found it offensive, threatening and abusive. Mr Redwood felt that it contained derogatory comments about the company's values and the contents caused him to be concerned for his safety and that of his colleagues. Most relevantly, the passages of concern were as follows:

"I could have struggled in today and ripped you and Fin new back sides in front of the kids. Sadly, the pain was too great. So you lucked out".

"The environment you have presented to me in my first week of employ is sadly unacceptable and most definitely untenable."

"Growth mindset and personal development planning are just two of the bullshit American terms we have adopted here in the UK for the last 2 decades to replace the term micromanagement".
24. On the basis of this letter, Mr Redwood decided to dismiss the claimant and sent him a dismissal letter dated 1.8.23 (80), which he scanned and sent by email that day. The reasons for dismissal set out in the letter were that the claimant was not meeting required conduct standards during his probation period.
25. On 31.8.23 Calvin Ganya, the respondent's Operations Director, emailed the claimant (70) with his P45 and final pay slip (2 payslips for July and August - 68 & 69). The claimant was paid 1 week's notice pay, 1 day's holiday pay (rounded up from 0.7 of a day), a full week's salary for the training and 1 day's pay for the day he was off sick.

Disability

26. The claimant claims that he was disabled at the time of his employment by reason of having sciatica.
27. On 31.7.23 the claimant went to his GP. The GP records (46) note pertinently that he had leg pain, which started last week after cycling, and a sciatic nerve stretch test was positive.
28. The claimant wrote to the respondent on 31.7.23 (78) saying "I have managed to successfully self diagnose myself as having erratic, acute, sciatica in my left leg in the past week which has been confirmed today sadly. I am unable to walk more than 50 yards at a time without seeking seating for the pain."
29. In a letter of 7.9.23 from his physiotherapist (47) it says that he was seen in the Greenwich Adults MKS team clinic, and the clinical impression was sciatica, although they were limited in their assessment due to a potential stomach hernia. It advised gentle home exercises to help, with a goal set to be able to walk comfortably for up to 500 yards.
30. In a discharge summary letter of 2.1.24 (48) from the Oxleas NHS Foundation Trust, it says relevantly that "On your last appointment you reported a 50% improvement in your symptoms. You reported that you were now able to walk for over 1 hour."
31. The letter also records that he had been offered an open appointment until 31 December, but had not contacted the service. They assumed he was managing well and did not require further MSK physiotherapy.

Discussion and Conclusions

Disability

Did he have a physical impairment of sciatica?

32. On the basis of the medical evidence before us, we find that he did.

If so, did it have a substantial adverse effect on his ability to carry out day-to-day activities?

33. We find that it did have a substantial adverse effect as he was unable to walk for more than 50 yards at a time without sitting down.

Were the effects of the impairment long-term?

34. We take judicial notice of the fact that sciatica is often curable with rest and gentle exercise and most people recover within a few months at most, although it can be recurring.
35. At the time of the claimant's dismissal on 1.8.23 he had only had symptoms for just over a week. There is no evidence that he had suffered from any such symptoms before. On balance, at that time, it was not likely that the sciatica

would last for 12 months or more, and there was no indication that it was likely to recur.

Conclusion on disability

36. At the time of his dismissal by the respondent, we find that the claimant was not disabled because his sciatica had not lasted at least 12 months, was not likely to last at least 12 months and was unlikely to recur.

Disability discrimination

37. As we have concluded that the claimant was not disabled at the relevant time, we have no need to consider his complaints of disability discrimination. However, for completeness, we have nonetheless done so.

Direct Disability Discrimination

38. The claimant claims his dismissal was less favourable treatment based on disability. He relies on a hypothetical comparator.
39. Such a comparator must be in materially similar circumstances and we find that a hypothetical comparator, who had written a letter like the claimant's, would also have been dismissed.
40. Therefore, the claimant was not treated less favourably. In any event, the dismissal was not because of his sciatica. It was because of the contents of his letter. Therefore, his complaint fails.

Direct Age Discrimination

41. The claimant claims that his dismissal was less favourable treatment based on his age. The claimant's age at the date of dismissal was 49 years and he compares himself with employees who started work on the same day as him who were in their mid to late 20s. They are called Eghosa, Flavian and Malcom. Alternatively, he relies on a hypothetical comparator.
42. Comparators must be in materially similar circumstances. These named employees did not write a derogatory letter. Therefore, they were not in materially similar circumstances.
43. We find that a hypothetical comparator, who had written a letter like the claimant's, would also have been dismissed.
44. In conclusion, the claimant was not treated less favourably.
45. Although retirement was mentioned at interview, the claimant was given the job. Age did not influence the decision to dismiss. The dismissal was because of the contents of his letter. Therefore, this complaint fails.

Discrimination Arising from Disability

46. The respondent knew about the claimant's sciatica from 31.7.23. The claimant claims that it was because of his sickness absence caused by his sciatica that he was dismissed.

47. The reason for dismissing the claimant was the contents of his letter of 31.7.23. It was not because of his sickness absence. His sickness absence had no influence on his dismissal.

48. Therefore, this claim fails.

Unauthorised Deduction from Wages

49. The claimant was paid all the wages he was entitled to. There was no unauthorised deduction from wages. This claim fails.

Holiday Pay

50. The claimant was paid all of his accrued holiday pay, with his 0.7 of a day due to him being rounded up to one full day.

51. There is no outstanding holiday pay. This claim fails

Employment Judge Liz Ord

Date **8 May 2025**

JUDGMENT SENT TO THE PARTIES ON
Date **14 May 2025**

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FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgements and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

ANNEX

Disability

1. Was the claimant disabled as defined in section 6 of the Equality Act 2010 (EqA) at the material time (the time of the events the claim is about ie July and August 2023)? The tribunal will decide:
 - 1.1. Did he have a physical impairment of sciatica?
 - 1.2. If so, did it have a substantial adverse effect on his ability to carry out day-to-day activities?
 - 1.3. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 1.4. If so, would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?
 - 1.5. Were the effects of the impairment long-term? (Consider as at the time of the discriminatory acts) The tribunal will decide:
 - 1.5.1. Did they last at least 12 months, or were they likely to last at least 12 months?
 - 1.5.2. If not, were they likely to recur?

Direct Disability Discrimination (Sections 13 and 23 EqA)

1. Did the respondent do the following thing. The action relied on as less favourable treatment is:
 - 1.1. Dismissal of the claimant
2. Was that less favourable treatment than the treatment of his comparator(s) in materially similar circumstances?
3. The claimant relies on the following comparator:
 - 3.1. a hypothetical comparator
4. If so, was this because of the claimant's protected characteristic of disability?
5. Did the respondent's treatment amount to a detriment?
6. Did the respondent know of the claimant's disability at the relevant time? If so, from what date did the respondent have such knowledge?

7. If not, could it reasonably have been expected to know? If so, from when?

Direct Age Discrimination (Sections 13 and 23 EqA)

1. The claimant's age at the material time was 49 years and they compare themselves with people in the age group mid to late 20s.
2. Did the respondent do the following thing. The action relied on as less favourable treatment is:
 - 2.1. Dismissal of the claimant
3. Was that less favourable treatment than the treatment of his comparator(s) in materially similar circumstances?
4. The claimant relies on the following comparators:
 - 4.1. 3 employees of the respondent who started work on the same day as the claimant. They are called Eghosa, Flavian and Malcom and are in the age group mid to late 20s.
 - 4.2. a hypothetical comparator
5. If so, was this because of the claimant's protected characteristic of age?
6. Did the respondent's treatment amount to a detriment?
7. Was the treatment a proportionate means of achieving a legitimate aim?
 - 7.1. The respondent says that its aims were: ?
8. The tribunal will decide in particular:
 - 8.1. Was the treatment an appropriate and reasonably necessary way to achieve those aims;
 - 8.2. Could something less discriminatory have been done instead;
 - 8.3. How should the needs of the claimant and the respondent be balanced.

Discrimination Arising from Disability (section 15 EqA)

1. Did the respondent know, or could it reasonably have been expected to know, that the claimant had the disability relied on? If so, what date?
2. What is the "something" arising in consequence of the claimant's disability?

The claimant relies on his sickness absence.
3. Did the claimant's sickness absence arise out of his disability?

4. Did the respondent treat the claimant unfavourably in any of the following respects because of his sickness absence?

- 4.1. By dismissing him.

5. Can the respondent show that the treatment was a proportionate means of achieving a legitimate aim? The respondent relies on the following aim:

6. The tribunal will decide in particular:

- 6.1. Was the treatment an appropriate and reasonably necessary way to achieve those aims;

- 6.2. Could something less discriminatory have been done instead;

- 6.3. How should the needs of the claimant and the respondent be balanced.

Unauthorised Deduction from Wages

1. Were the wages paid to the claimant less than the wages that should have been paid?

Holiday Pay

1. Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when the employment ended?

2. If so, how much is the claimant owed?