



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr S Harrop

v

Mirus Aircraft Seating Limited

### (CLOSED) PRELIMINARY HEARING

Heard at: Norwich

On: 30 May 2018

Before: Employment Judge Postle

#### Appearances:

For the Claimant: Miss Finnis, Partner.

For the Respondent: Mr Chapman, Solicitor.

## JUDGMENT

1. The claimant's claim that he was dismissed for asserting a statutory right under s.104 of the Employment Rights Act 1996 is dismissed upon withdrawal.
2. The claimant's claim that he suffered a detriment (other than dismissal) for making a protected disclosure is dismissed upon withdrawal.
3. The claimant's claim that he suffered a detriment on the grounds of asserting a health and safety issue under s.100 is dismissed upon withdrawal (with the exception of dismissal).

## CASE MANAGEMENT SUMMARY

### Listing the hearing

1. After all matters had been debated between the parties it was agreed that a realistic time estimate was **3 days** to include remedy if the claimant succeeds in whole or part. The claim has therefore been listed at **Norwich Employment Tribunal**, sitting at **Norwich Magistrates Court, Bishopgate, NORWICH, Norfolk, NR3 1UP** commencing on **Monday 5 November through to Wednesday 7 November 2018**.

## The claims

2. By one claim form presented on 2 March 2018 with the appropriate ACAS certificates, the claimant made claims for:-
  - 2.1 Disability discrimination under s.13 (direct) of the Equality Act 2010;
  - 2.2 Discrimination arising from disability under s.15 of the Equality Act 2010;
  - 2.3 Discrimination in failing to make reasonable adjustments under s.20 of the Equality Act 2010;
  - 2.4 Automatic unfair dismissal on the grounds of asserting health and safety under s.100 of the Employment Rights Act 1996;
  - 2.5 Detriment on the grounds of health and safety under s.44 of the Employment Rights Act 1996; (now withdrawn)
  - 2.6 Automatic unfair dismissal on the grounds of making a protected disclosure under s.43 of the Employment Rights Act 1996;
  - 2.7 Detriment on the grounds of making a protected disclosure under s.37B of the Employment Rights Act 1996; (now withdrawn)
  - 2.8 Automatic unfair dismissal for asserting a statutory right under s.104 of the Employment Rights Act 1996;
  - 2.9 Breach of contract; and
  - 2.10 Arrears of pay.
3. These give rise to the following specific issues.

## The issues

4. The disability relied upon by the claimant is; stress and depression. The claimant asserts that he has suffered from the same for a period of 20 years. The claimant asserts the respondent would have had knowledge of this alleged disability when the claimant went off sick on 25 October.
5. The respondent at this stage do not accept the claimant has a disability and do not accept they had any knowledge of the claimant's disability.
6. S.13: Direct disability discrimination
  - 6.1 This arises out of the dismissal.
7. S.15: Discrimination arising from disability
  - 7.1 That arises in relation to the dismissal only.

8. S.19: Direct discrimination and s.20: Claim for reasonable adjustments
  - 8.1 The claimant at this morning's hearing was in some difficulty identifying any provision, criterion or practice (PCP). It was therefore agreed (subject to order) the claimant will notify the respondent and Tribunal whether these two claims are being pursued or whether they are withdrawn, if they are not being withdrawn the claimant is to set out precisely what is being alleged.
9. S.104: Automatic unfair dismissal for asserting a statutory right
  - 9.1 This is dismissed on withdrawal.
10. S.43: Automatic unfair dismissal on the grounds of making a protected disclosure
  - 10.1 The claimant asserts the following:-
    - 10.1.1 The protected disclosure is in his letter to the respondent of 25 October.
    - 10.1.2 The specific protected disclosure the claimant relies upon is the standard of quality checks the aircraft seats underwent. The claimant believes in raising this that was the reason for his dismissal.
  - 10.2 In respect of making a protected disclosure, the claimant only relies on dismissal, he does not rely upon any detriment in the course of his employment.
  - 10.3 Mr Chapman, solicitor for the respondent makes the point there was no mention of the alleged protected disclosure in the claimant's letter of 25 October to the respondent, only a general statement about ongoing concerns regarding health and safety matters.
  - 10.4 The claimant relies upon s.43B(1)(d) that the health or safety of an individual has been, is being or is likely to be endangered.
11. S.100: Automatic unfair dismissal on the grounds of asserting health and safety
  - 11.1 Again, the claimant relies on matters raised in his grievance letter of 25 October.
  - 11.2 The particular section relied upon is s.100(c)(i).
  - 11.3 The claimant does not assert any form of detriment in the course of his employment only this is dismissed upon withdrawal.

12. Breach of contract

12.1 The claimant asserts that under the terms of his contract, clause 16.2 – any termination payments, could either be paid in a lump sum within 14 days or by monthly instalments. The claimant's employment ended on 27 November and the claimant was not paid until the December payroll and sums due were paid in one lump sum. The claimant is asserting that he incurred losses by way of extra taxation as a result of the lump sum payment.

12.2 The respondent asserts that the lump sum was paid in December's payroll, however if it was paid in instalments or lump sum the claimant given the period of time he worked fell into the next tax bracket and therefore there are no losses. If as a result of becoming unemployed he had over paid his tax then the claimant was duty bound to recover any overpayment of tax by way of a tax rebate.

13. Arears of pay

13.1 Apparently that is advanced in the same way as the breach of contract.

## ORDERS

### Made pursuant to the Employment Tribunal Rules 2013

1. **Amended response/Further information**

1.1 The claimant shall notify the respondent and the Tribunal by **14 June 2018** if the claim under s.19 indirect disability discrimination, and the claim under s.20 failure to make reasonable adjustments and the claim for breach of contract are withdrawn or whether some or all are being pursued. If any of the above claims are being pursued, in relation to the disability claim the claimant shall provide the following information:-

1.1.1 The provision, criterion or practice (PCP) the claimant asserts put him at a disadvantage, and in relation to the reasonable adjustment what reasonable adjustment the claimant asserts should have been made.

1.1.2 The precise nature of the breach of contract claim, together with a calculation of the damages.

1.2 The respondent shall have leave to amend their response on or before **28 June 2018**.

- 1.3 The claimant shall provide medical evidence as to the claimant's alleged disability of depression and stress, together with an impact statement as to how the disability affects the claimant's day to day activities and send to the respondent, with a copy to the Tribunal by no later than **Friday 29 June 2018**.
- 1.4 The respondent shall **within 14 days of 29 June 2018** notify the claimant and the Tribunal whether disability under s.6 of the Equality Act 2010 is conceded.
2. **Statement of remedy/schedule of loss**
  - 2.1 The claimant shall prepare a schedule of loss setting out the losses he claims flows from the dismissal giving details of any income derived in the intervening period whether temporary, part time, agency or locum. If the claimant has commenced self-employment the date he commenced self-employment together with a draft profit and loss accounts to date and send to the respondent by **28 June 2018**. Such schedule of loss to be updated 14 days before the hearing.
3. **Disclosure of documents**
  - 3.1 There be list of documents by **Friday 13 July 2018**.
  - 3.2 Requests for copies of documents contained in the above list by **27 July 2018**.
4. **Bundle of documents**
  - 4.1 The respondent has agreed to prepare the joint bundle, duly indexed and paginated, and provide one copy to the claimant by **30 August 2018**.
5. **Witness statements**
  - 5.1 It is ordered that evidence in chief in this case will be through typed witness statements. Such witness statements shall be in numbered paragraphs and in chronological order. If a document is to be referred to from the bundle the page number inserted in the relevant paragraph. Such witness statements shall confine themselves to the issues to be determined as referred to above and shall not consist of hypothesis, supposition or theory. Such witness statements to be exchanged on **Friday 5 October 2018**.

### **CONSEQUENCES OF NON-COMPLIANCE**

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

2. The tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

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**Employment Judge Postle**

Sent to the parties on:

19 June 2018

For the Tribunal:

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