



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss A Windett

AND
Limited

Earl Kendrick Associates

PRELIMINARY HEARING

HELD AT: London Central Employment Tribunal

On : 24 June 2019

BEFORE: Employment Judge Palca (Sitting alone)

Representation:

For Claimant: Mr R Clement, of Counsel
For Respondent: Mr C Milson, of Counsel

JUDGMENT

The Judgment of the Tribunal is that the Claimant's condition of dyslexia meets the definition of disability set out in the Equality Act 2010.

REASONS

Parties

1. The Claimant was employed by the Respondent as assistant building surveyor from 7 August 2017 until she resigned on 31 August 2018. She launched her ET1 on 28 October 2018 claiming that she had been unfairly dismissed, that she was discriminated against on the basis of disability and sex and that she had been harassed. Her claim for unfair dismissal was struck out by a Judgment sent to the

parties on 4 February 2019 on the basis that the Claimant had not been employed for two years by the Respondent and that she had not given any acceptable reason why the claim should not be struck out. A preliminary hearing was held on 8 March 2019 at which various directions were given, and at which the issue whether the Claimant had a disability within the meaning of the Equality Act 2010 would be determined at a preliminary hearing.

Issue

2. The issue for the Tribunal to determine is whether or not the Claimant has a disability within the meaning of s.6 Equality Act 2010. The Respondent accepts that the Claimant has dyslexia which is an impairment which has an effect on her normal day to day activities. It argues, however, that the effect is not substantial.

Witnesses

3. The Claimant and her sister, Jordan Windett, gave evidence to the Tribunal. The Claimant had produced a disability impact statement, and her sister had produced a witness statement. There was an agreed bundle of documents.

Law

4. The Guidance on the Definition of Disability dated 2011 sets out various issues which a Tribunal should bear in mind when deciding whether or not an individual is disabled within the meaning of s.6 of the Equality Act 2010. Whether or not something has a substantial adverse effect should take into account issues such as the time taken to carry out normal day to day activity, the way in which it is carried out and the cumulative effects of an impairment. An impairment may have minor effects on more than one activity. Taken together the cumulative result could amount in a substantial adverse effect on the Claimant's ability to carry out a number of normal day to day activities. Accounts should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by the use of coping strategies to prevent or reduce the effects of the impairment on normal day to day activities. In some instances, a coping strategy might alter the effect of the impairment so that it ceases to be substantial. Account should also be taken where a person avoids doing things which for example cause substantial social embarrassment. Successful use of avoidance strategies does not necessarily mean that a person ceases to meet the

definition of disability and whether or not it is reasonable to expect the Claimant to place particular restrictions on her working or personal life.

5. In some instances people have coping or avoidance strategies which cease to work in certain circumstances, and the example given is when someone with dyslexia is placed under stress. Where effects sometimes occur, for these people the effect must be taken into account when assessing the impact of the impairment.

6. The concept of normal day to day activities is not specifically defined, but is intended to comprise what people do on a regular or daily basis such as shopping, reading, writing, having a conversation, using a telephone, watching television, and carrying out household tasks as well as general work-related and study-related activities such as following instructions, using a computer and preparing written documents. Many of these issues have an impact in the present case. The appendix to the Guidance sets out examples of what may be substantial or not substantial though it is not intended to be prescriptive. The list includes, as items which if they were the only impairment it would be reasonable to regard as having a substantial adverse effect on normal day to day activities:

- *difficulty operating a computer, for example because of physical restrictions in using a key board, a visual impairment or a learning disability;*
- *inability to converse, or give instructions orally, in the person's native spoken language;*
- *difficulty understanding or following simple verbal instructions;*
- *difficulty hearing and understanding another person speaking clearly over the voice telephone;*
- *persistent and significant difficulty in reading or understanding written material where this is in the person's written native language, for example because of a mental impairment, or learning disability;*
- *persistent difficulty in recognising, or remembering the names of, familiar people such as family or friends;*
- *persistent distractibility or difficulty concentrating;*
- *compulsive activities or behaviour or difficulty in adapting after a reasonable period to minor changes in routine*

These items are relied upon by the Claimant. The Respondent in particular points out that *difficulty in understanding verbal instructions* is intended to relate to simple

instructions and *difficulty in reading or understanding written material* is intended only to apply where it is persistent and significant.

7. The Respondent relies on a number of factors which would not take be taken singly be regarded as having a significant impact, as set out in the Guidance. They include:

- *minor problems with writing or spelling;*
- *inability to reach typing speeds standardised for secretary work;*
- *inability to read very small or indistinct print without the aid of a magnifying glass;*
- *inability to fill in a long detailed technical document, which is in the person's native language, without assistance;*
- *inability to speak in front of an audience simply as a result of nervousness;*
- *some shyness and timidity;*
- *inability to concentrate on a task requiring application over several hours.*

8. The evidence before the Employment Tribunal, taken from a diagnostic assessment report dated 2005, includes that;

- the Claimant's total reading ability score is well below average and she was unable to sound out some non-words, suggesting a phonemic cause for her dyslexia;
- her passage comprehension was middle to high average suggesting she was able to draw meaning from context;
- she can cope with every day reading but advanced texts present problems and require re-reading;
- she has problems with writing assignments, spelling and note taking;
- she had above average IQ;
- while the Claimant's ability at phonological memory and phonological awareness were at or above average her rapid naming of digits and letter skills, a test of long-term memory which according to UCL is the key test for assessing dyslexia, was well below average.

9. The Claimant gave evidence on the effect of her dyslexia, as did her sister, whose evidence on the issue was not challenged by the Respondent. The Tribunal found that the effects of the Claimant's dyslexia are:

- difficulties in conveying or explaining complex or technical information;
- difficulties in explaining noncomplex sequences and events;
- difficulties in relaying messages or verbal information, for which the Claimant has developed coping mechanisms of note taking and internal synopsis;
- difficulties in conveying thoughts by phone;
- poor short-term memory;
- persistent difficulty in remembering the names of familiar people;
- poor skills relating to speaking in public settings where she maybe overheard by others;
- poor concentration on daily tasks which require sequencing, such as shopping for groceries or remembering the whereabouts of essential items, for which she has developed some coping mechanisms though they do not respond to the challenge completely;
- difficulty in concentrating when reading text, particularly large amounts of texts, for which her coping mechanisms include re-reading the text and summarising it in a form which she finds easier to remember;
- difficulty in processing written information in a loud and busy environment;
- grammatical difficulties;
- difficulties in concentrating on communications from others and retaining information.

10. Based on the information before the tribunal today, and without hearing evidence from the Respondent on the point, the tribunal accepted the Claimant's evidence that she had told the Respondent of her disability in September 2017 as well as in March 2018. The Respondent did not produce evidence to the contrary, and it seems clear that the Claimant was not ashamed to share the information and therefore logical that she would have told her then line manager of the position soon after she joined the Respondent.

Submissions

11. Both parties have lodged written submissions. The Respondent acknowledges that the Claimant has a long-term impairment but argues that it does not have any substantial effect on her ability to perform day to day activities but only a minor one. The Respondent cited various activities the claimant is able to carry out such as day

to day reading. She has developed coping strategies for other activities such as reading advanced texts. It concluded that because of her general skills and coping strategies she should not be regarded as disabled.

12. The Claimant's argument is that the effect of the Claimant's impairments, at least cumulatively, are substantial and that therefore she meets the definition of disability within the Equality Act 2010.

Conclusion

13. The sole issue for the Tribunal to determine is whether or not the impact of the Claimant's dyslexia has a substantial or insubstantial effect on her ability to carry out day to day activities.

14. The Tribunal notes that Ms A Bryant, a dyslexia specialist instructed by the Claimant on an apparently independent basis, has come to the conclusion that the Claimant is disabled. However, the Tribunal must make up its own mind based upon the evidence before it, and therefore no weight was attached to Ms Bryant's conclusion.

15. The Tribunal examined the Claimant's ability to carry out normal day to day activities, bearing in mind the Guidance that this may include general work-related and study-related activities such as interaction with colleagues, following instructions and preparing written documents.

16. The Tribunal also bore in mind that one should assess the impact of any impairment after assessing the effects of the Claimant's coping strategies on her abilities. The Respondent relied on the Claimant's statement recorded in a memorandum from her manager of 9 March 2018 that she seemed content in managing her condition by herself and did not need any reasonable adjustments. The Claimant's evidence was that the note was inaccurate. She said that she had told the Respondent she would like to be provided with software that corrects grammar as well as spelling and that she would like a wider variety of work to include fewer complicated report-writing tasks. The Tribunal accepted the Claimant's evidence, and that the reason why she had not sought to correct the statement at the material time because she was still on probation and did not want to make waves.

17. The Tribunal also bore in mind that while some consequences of the disability might be minor, when looked at in isolation, they may have a substantial impact when examined cumulatively.

18. The Tribunal found that the Claimant had difficulties conveying or explaining complex information and non-complex sequencing of events, she has poor short term memory meaning that she finds it difficult to retain information if she has not written it down, including instructions from managers and narrative information for example from a television programme; she has difficulties in conveying her thoughts to other people; she has poor concentration on daily tasks such as shopping and remembering of whereabouts of essential items which copying mechanisms do not completely deal with, she has difficulty in remembering people's names, she has difficulty in reading substantial amounts of texts without significant re-reading, and that her grammatical skills are poor and her spelling skills are not good.

19. Taking all these things together the Employment Tribunal has concluded that the cumulative effects of the impairment do have a substantial adverse effect on her ability to perform normal day to day activities, not least because they prevent her from effectively giving and receiving information (both orally and in writing) and because, her coping strategies regarding the production of written information in a timely manner, while helpful, do not mitigate the impact to such an extent that it becomes insignificant.

20. For that the reason the Tribunal declares that it believes that the Claimant is disabled within the meaning of the Equality Act 2010.

Employment Judge Palca

Dated: 24th June 2019

Judgment and Reasons sent to the parties on:

23/07/2019

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For the Tribunal Office