



EMPLOYMENT TRIBUNALS

Claimant: Stacey Uden as executor of Karolis Skema

Respondent: Saint Gobain Building Distribution Ltd

Heard at: East London Hearing Centre (by cloud Video Platform)

On: 03 December 2020

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: Donna Maguire, in house employee relations consultant

JUDGMENT

1. Mr Skema had a mental impairment (severe depression) at all material times, and it had lasted, or would be expected to last, at least 12 months.
2. The Respondent knew that Mr Skema had mental health problems of a disabling nature, but not until September 2019, and did not know, and could not be expected to know, that they were of (or were likely to last) at least 12 months (or for the remainder of Mr Skema's life).
3. The disability discrimination claim is dismissed.
4. The unfair dismissal claim is dismissed upon withdrawal by the Claimant.
5. The claim for other moneys is dismissed on withdrawal by the Claimant.

REASONS

1. This hearing is to decide the preliminary issue of whether the Claimant was, at the time he was employed by the Respondent, disabled by reason of a mental health impairment, and if so whether the Respondent knew, or should have known, of it.
2. The context of this case is sad, as on 22 April 2020 Mr Skema took his own life. The decision I have to make cannot be made with the benefit of hindsight, but has to be made on the basis of what was known at the time.
3. Ms Uden's submissions to me were dignified and I have no doubt that everything she told me was true, to the very best of her knowledge information and belief.
4. Mr Skema and Ms Uden lived together for over 7 years. He had always had mental health problems, in the sense that he was often withdrawn, often did not eat or sleep well, or would withdraw from social engagements at short notice. He did not talk to Ms Uden about this much, if at all. He kept these problems to himself, as he felt that he should simply get on with work, and carry on. He worked for the Respondent from 06 June 2017, as an HGV driver, and his attendance record and work were good. There were no significant absences. He did not mention mental health issues to the Respondent at any time before September 2019.
5. On 13 September 2019 he had an accident in his truck. He told his manager about his mental health problems and no disciplinary action was taken, for that reason. In documents found on his computer after his death he noted his return to work interview as having told his manager that he was having suicidal ideation. That was not recorded in the return to work interview notes, but I take the case of the Claimant at its highest on this point. Mr Skema was off work, but returned the next working day (16th).
6. He continued to work without interruption. He resigned by letter dated 29 October 2019. This does not refer to mental health or give any indication that the reason for resignation was connected with it. It is anodyne.
7. A letter came to the Respondent from Mr Skema's GP, dated 06 November 2019. It said that he needed an urgent referral to occupational health by reason of deteriorating mental health and that it was urgent. The Respondent did not do this, because the waiting time was 4 weeks and he was due to leave in 3 weeks. He was given the details of the confidential counselling service provided for employees.
8. There is a difference of opinion about when Mr Skema last worked for the Respondent. He was paid until his last day of employment, 26 November 2019. Ms Uden says that he was not allowed to work after 07 November 2019 because of the GP letter about his mental health. This seems likely to be so, and Ms Uden is in a position to know, Ms Maguire knowing only that he was paid for that period.
9. Mr Skema filed a grievance in January 2020, which the Respondent dealt

with, but that postdates the employment of Mr Skema, so is not relevant to the period ending 26 November 2019. It refers to the disciplinary as unfair and to mental health, but not to the reason for his resignation.

10. Ms Uden was clear that Mr Skema was increasingly unhappy about changes to work patterns and arrangements and felt increasing pressure as a result. She does not link the resignation to mental health problems or lack of care for them.
11. It is clear that Mr Skema had struggled with mental health for many years, but had not sought medical help for this, and had not said anything at work about it. The Respondent says that his work attendance record means he was not disabled by that issue, as work is a day to day activity and being an HGV driver is an occupation that requires skill and concentration. It is plain from what Ms Uden says, and from the GP's letter that at the time (September – November 2019) Mr Skema was affected by mental health problems that were within the definition in the Equality Act 2010. From Ms Uden's account it is plain that this had been the case for years, but worsened at that time. This was a disability: the test of "*substantial effect*" on ability to carry out day to day activities has only to be more than "*minor or trivial*" to qualify, and this effect – not sleeping or eating, and withdrawal – was such. It had lasted for years.
12. The issue is knowledge or putative knowledge. Mr Skema kept his worries and mental health problems very private. There is no way the Respondent could have known before 13 September 2019. Mr Skema did not tell them, and there were no tell-tale signs that they could or should have noticed. He arrived for work at 05:30 am regularly and did his job as an HGV driver without any complaints about his work from anyone.
13. On 13 September 2019 he did raise matters with his line manager, and that he was struggling with his mental health. However, there is no evidence that he said that he had suffered that way for years, and given his long term privacy about this it is not likely that he did. His resignation letter did not refer to it. His GP letter of 07 November 2019 made it clear that help was urgently required, but did not say it had been, or was likely to be, long term. Mr Skema had not previously sought medical help, and the GP did not refer to previous treatment or problems. then was placed on garden leave (Ms Uden is unlikely to be wrong about this) Mr Skema was then placed on garden leave until his employment ended. His grievance of January 2020 was after he had left and so not relevant but it, and the ET1 statement of case do not say that he had told the Respondent that it was long term.
14. For these reasons the Claimant is not able to show that the Respondent knew, or should have known, of the disability.
15. As that is a pre-requisite for a disability discrimination claim, I must strike out that claim.
16. I enquired about the unfair dismissal claim, as it appeared to me to be predicated on an allegation of breach of mutual trust and confidence in respect of disability. Ms Uden said that all she wanted from this claim was

to make sure that no-one else went through this situation. Ms Maguire said that ever since this happened, the Respondent had taken steps to ensure that management knew that mental health issues were a “*red flag*” for immediate action to be taken, that the posters about the confidential service were being reissued, and that, especially with the exacerbation caused by the pandemic, this was now an issue to the forefront of the minds of her team, and it was being stressed to managers as an issue of great importance.

17. The hearing was not to consider strike out of the unfair dismissal claim, but Ms Uden wished it to be withdrawn. The other claim was for bonus, but she accepted that he had left before the date it accrued to those in employment (sadly, Mr Skema had left one day before that date) and she wished to withdraw that claim also.
18. Accordingly I also dismiss those claims, upon their withdrawal.

**Employment Judge Housego
Date: 03 December 2020**