



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr J Milenkiewicz

v

Hypnos Ltd

Heard at: Watford (by CVP)

On: 26 October 2021

Before: Employment Judge R Lewis

Appearances

For the Claimant: In person

For the Respondent: No attendance or representation
(response not presented)

JUDGMENT

1. The claimant's application to amend by addition of a claim of disability discrimination is refused.
2. The respondent is ordered to pay to the claimant a compensatory award for unfair dismissal of £13,020.00.

REASONS

1. The claimant, who was born in 1971, was employed by the respondent from May 2015 until July 2020. He said that he was dismissed as one of a group of 96 employees made redundant in the same redundancy exercise.
2. Day A and Day B were both 22 July 2020 and the claim was presented on 25 September 2020.
3. In the absence of a response, the respondent was notified on 5 February 2021 that in accordance with Rule 21 it was no longer entitled to take part in the proceedings. The Tribunal has sent correspondence to the respondent, including notice of this hearing on 26 July 2021. It has never heard from the respondent.
4. On 9 March 2021 the claimant wrote to the Tribunal in terms which made clear that he wished to claim for disability discrimination as well as unfair

dismissal. By letter of 24 May, the claimant was told that that application would be considered at this hearing.

5. The claimant had prepared a small bundle of medical information. I first read the claim form to see whether it included a claim for disability discrimination. It did not. The appropriate box was not ticked in section 8, nor did the claimant declare a disability. He used the word “discrimination” once in the claim form, but in the context of discrimination against night workers.
6. The claimant agreed that he had not claimed disability discrimination. The reason he gave was that because the solicitors retained by his union, the GMB, had declined to support any of his claims, the claimant had put in a claim for unfair dismissal and left matters until a hearing to add a discrimination claim.
7. I asked him for information about the claim, and he referred to damage to his left elbow and an arm injury. Although he stated that he suffered from carpal tunnel syndrome, the English translation of his Polish medical certificate stated that that diagnosis that had not been made.
8. Discharge information and records from both the NHS in England and from a Polish physician reported mild injury.
9. There was no evidence from the claimant of a substantial effect on day to day activities, or of duration. I asked the claimant what had happened to him that constituted disability discrimination, and his answer was that working conditions had caused and then worsened forms of repetitive muscle or muscular skeletal injury. He agreed that he was one of 96 people made redundant at the same time, who had all received statutory redundancy payments.
10. I did not agree to amend the claim. When the claim was presented, the claimant understood that he considered that he had suffered disability discrimination. He was able to present his own claim form in person for unfair dismissal. He did so despite the rejection of his claim by solicitors. I could see no reason why he could not have added what he understood to be a claim for disability discrimination. He only needed to tick the relevant box, and add a few lines as introduction to do so.
11. When I came to consider the interest of justice, I noted first that the evidence of disability was at best incomplete, but more importantly, I noted that the claimant appeared to misunderstand badly what disability discrimination is in law. I explained to him that it is not a claim for an injury caused by working conditions. I also commented that for an individual whose period of unemployment was no more than four weeks, a claim for injury to feelings of £40,000.00 (in his schedule of loss) was simply not available. I understand the claimant had been disappointed by this.

12. On unfair dismissal, no basic award is payable as the claimant has received a statutory redundancy payment.
13. The claimant's evidence was that after a period of four weeks unemployment, he has taken up alternative employment, and is still in that work. I accept on the evidence of his bank statements that his net weekly pay from the respondent was £470.00. I therefore accept the calculation in his schedule of loss of 9 March 2021 as follows:

From 6 July to 2 August 2020, four weeks @ £470 = £1880.00;
From 3 August to 16 August 2020, two weeks loss of £147.00 (PMP Recruitment);
From 17 August 2020 to 8 March 2021, 27 weeks at an average loss of £167.00 a week, £4,509.00;
From 9 March to date, 32 weeks at net loss of £187.00 per week, £5,984.00.
Loss of statutory rights, £500.00
14. This hearing took place some 15 months after dismissal, and it did not seem to me just and equitable to order compensation to be payable for any future loss after today. The claimant has at all relevant times been in receipt of Universal Credit for which recoupment is not made.
15. Accordingly, the total award is as set out above.

Employment Judge R Lewis

Date:3/11/2021

Sent to the parties on: 13/11/2021

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For the Tribunal Office