



EMPLOYMENT TRIBUNALS

Claimant: Mr D Williams

Respondent: Blackpool Laundry Company Ltd

Heard at: Manchester (remotely, by CVP)

On: 8 December 2021

Before: Employment Judge Whittaker

REPRESENTATION:

Claimant: Mr McGrady (Friend)

Respondent: Ms J Barry (Counsel)

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was not disabled during the material dates of the period between 20 and 30 March 2020 inclusive by reason of the acknowledged physical impairment of asthma.
2. The claimant's claims of disability discrimination are dismissed.

REASONS

1. Mr Williams gave evidence by affirmation and the Tribunal was presented with and considered the relevant parts of a bundle of 99 pages which included three separate impact statements which the claimant had filed stating that he was disabled by reason of asthma. Those statements appeared at pages 57 and 58, 65-68 and 71-76. The relevant medical evidence was included at pages 64, 81 and 82. The claimant was cross examined by Ms Barry and answered a number of questions from the Tribunal.

2. It became very clear indeed following detailed discussions with the claimant and Mr McGrady that the claimant had believed that he had to prepare an impact statement to prove that he was disabled as at the date of today's hearing. This was an understandable confusion, in the opinion of the Tribunal, bearing in mind that the Tribunal had told the claimant in writing that he had to prove that he "is" disabled and that he "has" substantial long-term effects on his normal day-to-day activities related

to his acknowledged physical impairment of asthma. The Tribunal however carefully explained to Mr McGrady and the claimant that in fact that language was unfortunate and that the relevant period was 20-30 March 2020, and that it was as at that moment in time that the claimant needed to demonstrate that he was disabled, not today's hearing. However, the case today was listed for one day and there was more than ample time in which to discuss those issues with Mr McGrady and the claimant. The claimant was confidently and openly able to address questions from the Tribunal and from Ms Barry about the definition under section 6 and how it applied to the claimant between 20 and 30 March 2020.

3. As anyone reading this Judgment will be aware, the Government imposed wide-ranging restrictions on the public with effect from Monday 23 March 2020. The claimant indicated that in any event he was self-isolating from 20 March due to a medical condition suffered by his mother, and equally because of his own asthma. It was clear therefore that the claimant suffered a significant effect on his ability to carry out normal day-to-day activities from 20-30 March 2020 in any event, but the reason why those effects were suffered by the claimant was because of COVID restrictions. Furthermore, and understandably, the claimant indicated that he was caused considerable anxiety by the COVID outbreak as a result of the potential impact that it could have on his health and that of his mother. He understandably became particularly anxious as from 20 March 2020 and he accepted that his anxiety caused further impact on his quality of life and on his ability to carry out normal day-to-day activities. There was however no evidence presented to the Tribunal that any effect on his normal day-to-day activities during that period of time related to the physical impairment of asthma.

4. The claimant did however tell the Tribunal that on 28, 29 and 30 March 2020 the claimant suffered some asthma attacks, but these were never serious enough to require the claimant to obtain any medical advice, either from his GP or by dialling NHS 111. The claimant was perfectly adequately able to resolve these attacks by using his inhaler which the claimant told the Tribunal "sorted it out". The claimant however did not give the Tribunal any evidence of the effects which these asthma attacks had on the claimant. In the opinion of the Tribunal, the effects must have been relatively minor if they were resolved without the need for any medical advice and by the claimant simply using his inhaler. The claimant therefore in describing the fact that he had asthma attacks was simply describing to the Tribunal medical symptoms, but he was not describing how those medical symptoms had any effect on his normal day-to-day activities. In the absence of any evidence presented by the claimant the Tribunal concluded that there was no evidence of any substantial effects on normal day-to-day activities due to asthma as a result of these asthma attacks. Furthermore, the Tribunal was not told what any effect may have been if the inhaler had not been used.

5. The Tribunal then considered the period leading up to March 2020. The Tribunal noted that the last annual review for the claimant's asthma had taken place in September 2016, some 3½ years before March 2020. During those years the claimant had received no medical treatment for asthma except very occasional chest infections in December 2016 and March 2019, but the Tribunal noted that that in itself was one year prior to the events in March 2020.

6. From August 2019 until his dismissal at the end of March 2020 the claimant was working in a laundry. He told the Tribunal that he was working in a very warm,

very damp working environment. He worked long hours and it was hard physical work. He worked in that environment for some seven or eight months, but he had no periods of sickness absence. He described no effects on his normal day-to-activities which were in any way induced by his working environment as a result of suffering from asthma.

7. The Tribunal asked the claimant whether there were any issues affecting the claimant as a result of his asthma leading up to his employment in August 2019, and the claimant said that if there were any issues that they were “minimal” and that that was why he had not told the respondent about his asthma when he applied to join them in August 2019. The claimant obviously did not think that his asthma was an issue which needed to be brought up with his employer as a result of the absence of any real effects on his normal day-to-day activities.

8. The medical report included in the bundle did not give the Tribunal any details of any impact on the normal day-to-day activities of the claimant and described the overall picture painted as being one of the claimant suffering from mild asthma.

9. Under cross examination the claimant was asked what problems he had had since his last annual review in September 2016, and the claimant replied that he had really had “no problems at all”.

10. The claimant confirmed to the Tribunal that he only used his inhaler two or three times a year when he suffered from any form of chest infection. He also told the Tribunal that he had not used any steroid inhaler since 2014.

11. The claimant confirmed that prior to the end of March 2020 he was “happy he was in good health”. The claimant confirmed that those words were accurate when asked to do so by the Tribunal.

12. At page 74 of the bundle, in the third impact statement prepared by the claimant, the claimant had set out a list of what he said were effects on his normal day-to-day activities, but from the language used it was clear that the claimant had mistakenly set out that list as it applied at this moment in time, and it was not a statement which applied to the relevant material time to be examined by the Tribunal, namely the end of March 2020. Nevertheless the Tribunal went through each of those identified effects to see whether or not they applied in March 2020, or indeed for example at any time in the 12 months prior to March 2020. The claimant confirmed to the Tribunal that none of those impacts related to his physical impairment of asthma, apart from the suggestion that the claimant could not walk to the shops or carry shopping for long distances. The claimant did not identify what he meant by a “long distance”, but in any event the Tribunal was satisfied that walking long distances to the shops and/or carrying shopping long distances home was not a normal day-to-day activity. The claimant said that all he had to do was to stop briefly to catch his breath. He did not have to use his inhaler. He did not say how long he had to pause for, and neither did he explain what he meant by “long distances”. In the opinion of the Tribunal, this was a very minor inconvenience which the claimant was very easily able to overcome by simply pausing for breath. The Tribunal found that this would be the normal approach to anyone walking long distances to the shops. It would be perfectly normal for people to stop for a short period of time to pause for breath, particularly when returning with heavy bags of shopping. The Tribunal did not consider that this amounted to a substantial effect on normal day-to-day activities.

13. The only other issue listed in numbers 1-8 was number 6, where the claimant indicated that it took him a long time to get out of bed in the morning, but the claimant openly acknowledged that he was working long hours in hard manual work. The Tribunal did not believe, therefore, that taking a long time to get out of bed was an unusual restriction on any normal day-to-day activity. The Tribunal found that that would be extremely common amongst most of the working population, but it was not an effect which related to the physical impairment of asthma, it was a consequence of the nature of the work and the length of the claimant's working hours.

14. Concluding her cross examination Ms Barry asked the claimant what usually was the effect on the claimant's normal day-to-day activities before the end of March 2020, and the claimant's reply was, "no real effect on day-to-day activities". When questioned by the Tribunal about that reply the claimant specifically confirmed that he accepted that that comment "would be fair, yes".

15. Taking all the above factors into account, therefore, the Tribunal did not find that the claimant was disabled in the period 20-30 March 2020 by reason of the acknowledged physical impairment of asthma. The claimant did not satisfy the Tribunal that asthma had a substantial or long-term adverse effect on the ability of the claimant to carry out normal day-to-day activities. The claimant was not therefore disabled at the material time. The claimant's claims of disability discrimination therefore are dismissed.

Employment Judge Whittaker

Date: 13th December 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON
20 December 2021

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