



EMPLOYMENT TRIBUNALS
(England and Wales)
London Central Region

Claimant: Mr D Sims
Respondent: University College London Hospitals NHS Foundation Trust

Heard by CVP on 10/5/2023
Before: Employment Judge J S Burns

Representation

Claimant: in person
Respondent: Mr L Harris (Counsel)

JUDGMENT

1. By consent, the name of the Respondent is amended so it reads as above
2. The Claimant's informal application to amend his claim to add a disability discrimination claim for failure to make reasonable adjustments, is refused
3. Any claim for a contractual redundancy payment is dismissed on withdrawal by the Claimant
4. The constructive unfair dismissal claim is struck out
5. The claim for a statutory redundancy payment is struck out.

Reasons

For paragraph 2 above.

1. I have applied the Selkent principles. The Claimant has not produced any draft amended claim to indicate what his disability claim would be but explained orally that the proposed claim would be a claimed failure by the Respondent to make reasonable adjustments for his disability (consisting in his anxiety, depression and OCD).
2. The Claimant says that the only role he was suitable for was his old role as Grade 7 nurse in the cardiovascular health and rehabilitation department and that the claimed reasonable adjustment would have been keeping him in that role rather than evicting him from it which occurred finally with the conclusion of the Respondent's organisational change process on 3/2/22.
3. That claim has no reasonable prospect of success for two reasons: (i) because the duty on any employer to make reasonable adjustments does not require the employer to retain a disabled employee in a role which the employer does not require, and in this case, as a result of restructuring, the Respondent did not require the Claimant's services in that department; and (ii) in any event the contemporaneous medical evidence - for example the OH report of 10/5/22 (which the Claimant accepted) is that he was able to perform an alternative ward-based role on AMU subject to adjustments being made, as set out in that report, which were offered to him.
4. Any DDA claim would now be significantly out of time and no good reason is put forward why this claim, if it was to be made at all, was not made earlier or in the ET1.

For paragraph 4 above.

5. In order to make a successful constructive unfair dismissal claim an employee has to show, inter alia, that he resigned in response to a fundamental breach of contract by the employer. In this case the Claimant does not rely on any express written contractual term but on a claimed breach of the implied term of trust and confidence consisting in him not being allowed to remain in his old role as a Grade 7 nurse in the cardiovascular health and rehabilitation department.
6. For that claim to succeed the Tribunal would have to conclude that there was no reasonable or proper cause for the Respondent having removed the Claimant from that role.
7. The process which led to that removal was explained fully at the time - for example in a letter dated 31/3/22. Claimant does not claim that the process was a sham.
8. As a result of a managerial restructuring and competitive interview the Respondent did not require the Claimant's services in that department; - by February 23 it needed only one Grade 7 nurse. The Respondent was best placed to decide how to re-organise its department and was entitled to do so without subsequent interference by the Employment Tribunal.
9. The employer was not obliged to retain the Claimant in a role it did not need.
10. The Claimant was offered an alternative role to be taken on by him on a phased return basis as recommended by OH.
11. Hence there is no reasonable prospect of the Claimant proving the alleged breach of contract by the Respondent that he relies on.
12. In addition, even if there had been a breach, the Respondent would have a strong argument that the Claimant had waived the breach and affirmed the contract by his waiting until July 22 before resigning.

For paragraph 5 above.

13. In order to be entitled to a statutory redundancy payment the Claimant would have to show that he was actually or constructively dismissed by the Respondent. He has no reasonable prospect of proving either, as he resigned but will not be able to show a breach of contract causing this.

J S Burns Employment Judge
London Central
10/5/2023
For Secretary of the Tribunals
Date sent to parties 10/05/2023
