



EMPLOYMENT TRIBUNALS

Claimant: Mr Martin Lovett

Respondent: Master Butchers Epsom Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: London South ET, Croydon (in private; by telephone)

On: 2 October 2023

Before: Employment Judge Abbott

Appearances

For the claimant: in person

For the respondent: Ms Hafiza Suleman, solicitor

CASE MANAGEMENT ORDERS

Final hearing

1. The final hearing will take place at London South Employment Tribunal, Croydon on 15, 16 and 17 May 2024. The case will be heard by an Employment Judge and two non-legal members. The hearing will start at 10.00 am. You must arrive by 9.30 am.
2. If you think that more or less time will be needed for the hearing, you must tell the Tribunal as soon as possible.

Hearing timetable

3. The hearing is listed for 3 days. The hearing timetable is likely to be:

| | | |
|-------|---------|--|
| Day 1 | 3 hours | Tribunal reading and preliminary matters |
| | 3 hours | Claimant's evidence |

| | | |
|-------|---------|--|
| Day 2 | 3 hours | Respondent's evidence |
| | 2 hours | Submissions |
| Day 3 | 4 hours | Tribunal making decision and giving Judgment |
| | 2 hours | Dealing with compensation or other remedies if necessary |

4. If you think that more or less time will be needed for the hearing, you must tell the Tribunal as soon as possible.

Preliminary hearing: disability

5. There shall be a public preliminary hearing to take place at London South Employment Tribunal, Croydon on 16 January 2024. The case will be heard by an Employment Judge. The hearing will start at 10.00 am. You must arrive by 9.30 am.
6. The purpose of the hearing is to decide the following:
- 6.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
- 6.1.1 Did they have a physical or mental impairment: depression and anxiety?
- 6.1.2 Did it have a substantial adverse effect on their ability to carry out day-to-day activities?
- 6.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
- 6.1.4 Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?
- 6.1.5 Were the effects of the impairment long-term? The Tribunal will decide: 6.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
- 6.1.5.2 if not, were they likely to recur?
- 6.2 Any applications made by the respondent to strike-out aspects of the claim and/or to impose deposit orders.
- 6.3 Further case management, as necessary (to include consideration of the time estimate for the final hearing and whether non-legal members are required, which will depend on the outcome of the disability question)
7. At least 7 days before the hearing the respondent must send an electronic copy of a bundle containing the pleadings, orders and all documents relevant to the issue of disability to the Tribunal for the Tribunal to use.

Amendment of the Grounds of Resistance

8. Following clarification of the claim today, the respondent has permission by 23 October 2023 to file amended Grounds of Resistance (such amendments to include the correction to paragraph 24 explained during today's hearing).

Claims and Issues

9. The claims and issues, as discussed at this preliminary hearing, are listed in the Case Summary below. If you think the list is wrong or incomplete, you must write to the Tribunal and the other side by 23 October 2023. If you do not, the list will be treated as final unless the Tribunal decides otherwise.

Schedule of Loss

10. The claimant must by 27 November 2023 send to the respondent and the Tribunal a document setting out how much compensation for lost earnings or other losses they are claiming and how the amount has been calculated. This is called a Schedule of Loss.

Disability

The Equality Act 2010 says that a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

There is more information about this here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf

11. The claimant says the disability is depression and anxiety.
12. The claimant must write to the respondent by 27 November 2023 with the following information:

12.1 How long has the claimant had the impairment?

12.2 What are/were the effects of the impairment on the claimant's ability to do day-to-day activities?

The claimant should give clear examples. If possible, the examples should be from the time of the events the claim is about. The Tribunal will usually be deciding whether the claimant had a disability at that time.

In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can

include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.

- 12.3 Give the dates when the effects of the impairment started and stopped. If they have not stopped, say how long they are expected to last.
 - 12.4 If the effects lasted less than 12 months, why does the claimant say they were long-term?
 - 12.5 Has the claimant had medical treatment, including medication? If so, what and when?
 - 12.6 Has the claimant taken other measures to treat or correct the impairment? If so, what and when?
 - 12.7 What would the effects of the impairment have been without any treatment or other measures? The claimant should give clear day-to-day examples, if possible.
 - 12.8 Any other information the claimant relies on to show that they had a disability.
13. The claimant must by 27 November 2023 send to the respondent:
- 13.1 copies of the parts of their GP and other medical records that are relevant to whether they had the disability at the time of the events the claim is about. They may blank out anything that is clearly not relevant;
 - 13.2 any other evidence relevant to whether they had the disability at that time.
14. The respondent must write to the Tribunal and the claimant by 22 December 2023 confirming whether or not it accepts that the claimant had a disability and, if so, on what dates. The respondent must deal with each impairment separately. If the respondent does not accept that the claimant had a disability on any relevant date, it must explain why. If the respondent does accept that the claimant had a disability at all relevant times, it should inform the Tribunal whether the hearing on 16 January 2024 is still required.

Documents

15. By 31 January 2024 the claimant and the respondent must send each other a list of, and electronic copies of, all documents they have relevant to the issues listed in the Case Summary below. This includes documents relevant to financial losses and injury to feelings.
16. Documents includes recordings, emails, text messages, social media and other electronic information. You must list all relevant documents you have in your possession or control even if they do not support your case.

File of documents

17. By 21 February 2024, the claimant and the respondent must agree which documents are going to be used at the hearing.
18. The respondent must prepare a file of those documents with an index and page numbers. They must send a hard and electronic copy to the claimant by 6 March 2024.
19. The file should contain:
 - 19.1 The claim and response forms, any changes or additions to them, and any relevant tribunal orders. Put these at the front of the file.
 - 19.2 Other documents or parts of documents that are going to be used at the hearing. Put these in date order.
20. The claimant and the respondent must both bring a copy of the file to the hearing for their own use.
21. The respondent must bring four more copies of the file to the hearing for the Tribunal to use by 9.30 am on the first morning.

Witness statements

22. The claimant and the respondent must prepare witness statements for use at the hearing. Everybody who is going to be a witness at the hearing, including the claimant, needs a witness statement.
23. A witness statement is a document containing everything relevant the witness can tell the Tribunal. Witnesses will not be allowed to add to their statements unless the Tribunal agrees.
24. Witness statements should be typed if possible. They must have paragraph numbers and page numbers. They must set out events, usually in the order they happened. They must also include any evidence about financial losses and any other remedy the claimant is asking for. If the witness statement refers to a document in the file it should give the page number.
25. At the hearing, the Tribunal will read the witness statements. Witnesses may be asked questions about their statements by the other side and the Tribunal.
26. The claimant and the respondent must send each other copies of all their witness statements by 3 April 2024.
27. The claimant and the respondent must both bring copies of all the witness statements to the hearing for their own use.

28. The respondent must bring four more copies of the witness statements to the hearing for the Tribunal to use by 9.30 am on the first morning.

Hearing preparation

29. By 24 April 2024, the claimant and the respondent must both write to the Tribunal to confirm that they are ready for the hearing or, if not, to explain why.

Variation of dates

30. The parties may agree to vary a date in any of these orders by up to 21 days without the Tribunal's permission, but not if this would affect the hearing date.

About these orders

31. These orders were made and explained to the parties at this preliminary hearing. They must be complied with even if this written record of the hearing arrives after the date given in an order for doing something.
32. If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.
33. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

Writing to the Tribunal

34. Whenever they write to the Tribunal, the claimant and the respondent must copy their correspondence to each other.

Useful information

35. All judgments (apart from judgments under Rule 52) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employmenttribunal-decisions> shortly after a copy has been sent to the claimants and respondents.
36. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here: <https://www.judiciary.uk/publications/employment-rules-and-legislation-practicedirections/>
37. The Employment Tribunals Rules of Procedure are here: <https://www.gov.uk/government/publications/employment-tribunal-procedurerules>

38. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: <https://www.gov.uk/appeal-employment-appeal-tribunal>

CASE SUMMARY

39. The claimant was employed by the respondent as a butcher from 3 October 2022 until 2 December 2022. Early conciliation started on 9 December 2022 and ended on 20 January 2023. The claim form was presented on 22 January 2023.

The Complaints

40. The claimant is making the following complaints:
- 40.1 Failure to make reasonable adjustments (sections 20 & 21 Equality Act 2010);
 - 40.2 Harassment related to disability (section 26 Equality Act 2010);
 - 40.3 Unlawful deductions from wages;
 - 40.4 Failure to provide a written statement of employment particulars.
41. The claimant ticked the “unfair dismissal” box on the ET1 claim form, but confirmed today that he does not advance such a claim. This has accordingly been dismissed in a separate judgment.

The Issues

42. The issues the Tribunal will decide are set out below.

1. Disability

- 1.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
- 1.1.1 Did they have a physical or mental impairment: depression and anxiety?
 - 1.1.2 Did it have a substantial adverse effect on their ability to carry out day-to-day activities?
 - 1.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 1.1.4 Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?
 - 1.1.5 Were the effects of the impairment long-term? The Tribunal will decide:
 - 1.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
 - 1.1.5.2 if not, were they likely to recur?

2. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

- 2.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?
- 2.2 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCPs:
 - 2.2.1 Holding disciplinary hearings in person.
 - 2.2.2 Holding disciplinary hearings on short notice where severe allegations were being made.
- 2.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant’s disability, in that:
 - 2.3.1 The claimant was unable properly to prepare for the disciplinary hearing.
 - 2.3.2 The claimant was unable to attend the disciplinary hearing.
- 2.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- 2.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:
 - 2.5.1 He should have been given more time to prepare for the disciplinary hearing.
 - 2.5.2 The disciplinary hearing should have been conducted remotely.
- 2.6 Was it reasonable for the respondent to have to take those steps?
- 2.7 Did the respondent fail to take those steps?

3. Harassment related to disability (Equality Act 2010 section 26)

- 3.1 Did the respondent do the following things:
 - 3.1.1 On 1 December 2022, Natasha sending an email to the claimant stating his December pay would be under review.
- 3.2 If so, was that unwanted conduct?
- 3.3 Did it relate to disability?

- 3.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
 - 3.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
4. Remedy for Equality Act claims
- 4.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
 - 4.2 What financial losses has the discrimination caused the claimant?
 - 4.3 Has the claimant taken reasonable steps to mitigate those losses? If not, what is the appropriate award in this respect?
 - 4.4 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
 - 4.5 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
 - 4.6 Should interest be awarded? How much?
5. Unauthorised deductions
- 5.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted? The respondent avers that it deducted £534.66 from the claimant's wages but that these deductions were lawful.
6. Written statement of employment particulars
- 6.1 When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?
 - 6.2 If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

Dated: 2 October 2023

Employment Judge Abbott

ORDER SENT TO THE PARTIES ON

3 October 2023

FOR THE TRIBUNAL OFFICE