



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr R D Callaghan

AND

Respondent

NHS Property Services Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bodmin

ON

24 February 2017

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Mr N Moore of Counsel

For the Respondent: Mr C Milsom of Counsel

JUDGMENT

The judgment of the tribunal is that the claimant is a disabled person by reason of a mental impairment.

RESERVED REASONS

1. This is the judgment following a preliminary hearing to determine whether the claimant was a disabled person at the material times by reason of a mental impairment.
2. I have heard from the claimant, who gave evidence today. I found the following facts proven on the balance of probabilities after considering the evidence before me, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
3. The claimant commenced employment in 2012 and at the time of his resignation in July 2016 was employed by the respondent as a Site Engineer. He had been absent on certified sick leave for an extended period in connection with cardiac problems, which is a physical impairment which is conceded by the respondent to be a disability. In addition the claimant has suffered from stress and anxiety, which is not conceded by the respondent to be a disability. At the time of his resignation there were unresolved issues at work largely to do the claimant's line management.
4. There is limited reference in the relevant medical notes and records to the claimant's stress and anxiety. He had suffered from this in 2010, and again in the year preceding his resignation from May/June 2015 until July 2016. He was prescribed and was taking anti-depressants as a matter of course, and has acted on medical advice to seek counselling.

The condition has clearly spilled over into his private life, and goes beyond merely work related concerns and difficulties.

5. The claimant confirmed in his evidence today that: “it never leaves me, I suffer from extreme high level anxiety ... my tolerance is low ... unfair decisions affect me more than I would consider reasonable ... I have to avoid situations that might end in confrontation ... it might be an argument about bad service, or parking in the wrong place ... I am on the edge of being able to cope with every day life ... it's difficult to think of specifics but it could be anything ... some issues build up to such a point that I will sit in a room and cry ... I feel I am on a knife edge ... I have felt suicidal ... my GP monitors this situation ...I have redesigned my life to try to avoid stress ... work is a serious consideration, but I already had an underlying capacity for stress ... it's not just my Line Manger and the HR Manager – my underlying condition would not have gone away ...”
6. The respondent was not in a position seriously to challenge this evidence, which is consistent with the relevant medical notes and reports.
7. Having established the above facts, I now apply the law.
8. The claimant alleges discrimination because of his disability under the provisions of the Equality Act 2010 (“the EqA”). The claimant alleges discrimination arising from a disability, and failure by the respondent to comply with its duty to make adjustments.
9. Disability is defined in section 6 and schedule 1 of the EqA. A person P has a disability if he has a physical or mental impairment that has a substantial and long-term adverse effect on P's ability to carry out normal day to day activities. A substantial adverse effect is one that is more than minor or trivial, and a long-term effect is one that has lasted or is likely to last for at least 12 months, or is likely to last the rest of the life of the person.
10. I was referred to and have considered the case of Herry v Dudley Metropolitan Council UKEAT/0100/16/LA, and the cases referred to in that judgment.
11. In this case the respondent concedes that the claimant has suffered from the mental impairment of stress and anxiety, and that this condition is long term in the sense that it has lasted or is likely to last for more than twelve months. The respondent does not however accept that there has been any substantial adverse impact on the claimant's day to day activities.
12. It is clear from Herry that there are circumstances under which an employee suffers from work related stress but does not meet the statutory definition of disability. This is explained for example in paragraph 56 of the judgment of HHJ Richardson: “Although reactions to adverse circumstances are indeed not normally long lived, experience shows that there is a class of case where a reaction to circumstances perceived as adverse can become entrenched, where the person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on day to day activities. A doctor may be more likely to refer to the presentation of such an entrenched position as stress than as anxiety or depression. An Employment Tribunal is not bound to find that there is a mental impairment in such a case. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise (if these or similar findings are made by an Employment Tribunal) are not of themselves mental impairments: they may simply reflect a person's character or personality. Any medical evidence in support of a diagnosis of mental impairment must of course be considered by an Employment Tribunal with great care; so must any evidence of adverse effect over and above an unwillingness to return to work until an issue is resolved to an employee's satisfaction; but in the end the question whether there is a mental impairment is one for the Employment Tribunal to assess.”
13. In this case the respondent asserts that the claimant's stress is work related and flows from his dissatisfaction with his line management and other such issues, and that there is no substantial adverse effect on the claimant's day to day activities. In these circumstances, as is made clear by Herry, an Employment Tribunal is not bound to find that there is a mental impairment in such a case.
14. In my judgment this case goes beyond such an example. It is clear from his medical records that the claimant has suffered from stress and anxiety both in 2010 and more latterly in the year preceding his resignation from May/June 2015 until July 2016. That is

- a mental impairment which is long term. It is also linked to his other condition of cardiac difficulties, and each condition is potentially likely to have an effect on the other.
15. In any event it is clear from the claimant's evidence that his stress and anxiety is not limited to the work place or to work place issues. He has been prescribed and has taken anti-depressants as a matter of course, and has acted on medical advice to seek counselling. His stress and anxiety has spilled over from any work related issues, is linked to his cardiac problems, and has an impact on his daily life and activities. It affects his ability to socialise and to communicate with others. It provokes unreasonable reactions to seemingly ordinary daily occurrences, and on occasions he is unable to cope with every day circumstances and challenges which despite their apparently innocuous nature sometimes leave him bereft and crying. The effect on his day to day activities is therefore substantial in the sense that this is clearly more than minor or trivial.
 16. Accordingly therefore in my judgment the claimant meets the statutory definition of a disabled person in respect of his stress and anxiety, and I so find.
 17. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 3 to 6; a concise identification of the relevant law is at paragraphs 8 to 10; how that law has been applied to those findings in order to decide the issues is at paragraphs 11 to 16.

Employment Judge N J Roper
Dated 24 February 2017

Judgment sent to Parties on
06 March 2017 by email only
Mr JA Ongaro for the Tribunal Office