



## EMPLOYMENT TRIBUNALS

**Claimant**

**Mr S Jeromjeyabalan**

v

**Respondent**

**Royal Mail Group Limited**

### (OPEN) PRELIMINARY HEARING

**Heard at:** Norwich

**On:** 1 May 2018

**Before:** Employment Judge Postle

**Appearances:**

**For the Claimant:** Mr Brown, Counsel.

**For the Respondent:** Miss Anaman, Trainee Solicitor.

### JUDGMENT

1. The claimant's claims for wrongful dismissal are dismissed upon withdrawal.
2. The claimant's claims under the Equality Act 2010 for the protected characteristic of sex are dismissed upon withdrawal.
3. The claimant's claims under s.57A of the Employment Rights Act 1996, time off for dependents are dismissed upon withdrawal.

### CASE MANAGEMENT SUMMARY

**Listing the hearing**

1. Originally the claims had been listed at Norwich Employment Tribunal with a time estimate of 2 days commencing on 30 and 31 May 2018 and both parties agreed the time estimate of 2 days was insufficient. This hearing date has therefore been vacated and a new date at **Norwich Employment Tribunal sitting at Norwich Magistrates Court, Bishopgate, NORWICH, Norfolk, NR3 1UP** has been listed with a time estimate of **4 days**, commencing on **Monday 2 July 2018 through to Thursday 5 July 2018**.

## The claims

2. By one claim form filed on 21 July 2017, the claimant made claims for:
  - 2.1 Ordinary unfair dismissal;
  - 2.2 Wrongful dismissal (now withdrawn);
  - 2.3 Direct discrimination – disability;
  - 2.4 Direct discrimination – sex (now withdrawn);
  - 2.5 Indirect discrimination – disability;
  - 2.6 Indirect discrimination – sex (now withdrawn);
  - 2.7 Discrimination arising from disability;
  - 2.8 Failure to make reasonable adjustments; and
  - 2.9 Refusal of a request for time off for dependents (now withdrawn).

## The issues

3. These give rise to the following specific issues:
  - 3.1 Unfair Dismissal
    - 3.1.1 Pursuant to the OH Assist report dated 26 January 2017, the claimant was suitable for administrative roles.
    - 3.1.2 The claimant had requested that a “scoping exercise” be carried out in order to redeploy him. The outcome of that scoping exercise is recorded in the interview notes of the meeting held on 1 March 2017 as:

“Mount Pleasant MC – ongoing VR programme – no opportunities

Croydon MC – have recently progressed 12 VR’s and have a task of 10 for 2017 – 18 – no opportunities

HRS Recruitment – no suitable vacancies

PFW Recruitment – no suitable vacancies

Logistics Field Team – no suitable vacancies”
    - 3.1.3 The claimant, as supported by the OH Assist report, requested the following roles:
      - a. A desk-based job (either within Jubilee Mail Centre or any other Mail Centres within travelling distance).

- b. A job within the delivery caller's office or any book room based jobs.
- c. A job within data collection, quality checks and data entry.
- d. A security/reception role.
- e. A role within production control.
- f. A role within reasonable travel distance.
- g. Any other role which he was capable of performing pursuant to the OH Assist report dated 26 January 2017.
- h. A temporary position in the above roles.

3.1.4 The claimant asserts that the "scoping exercise" conducted by the respondent was inadequate and unfair in that they did not scope all vacancies applicable and did not scope all Mail Centres applicable and only those referred to in the 1 March 2017 minutes (the claimant stating that he was "open to all options" in the Redeployment Considerations dated 3 February 2017). The claimant refers to the size and administrative resources of the respondent's undertaking (the respondent confirming in their ET3 that they employ 139,000 people). The respondent also failed to hold an interview and/or failed to adequately consider information to ascertain the claimant's skill base required to conduct an adequate redeployment.

3.1.5 Further, the respondent failed to consider a job rotation or a job swap arrangement, to allow the claimant to undertake a role as outlined above.

3.1.6 Further, the respondent breached their ill health retirement appeals procedure in failing to appoint an appeal manager and/or hold an appeal against the dismissal for an unreasonable amount of time.

3.2 Direct Discrimination (s.13 of the Equality Act 2010) (Disability)

3.2.1 The claimant suffers from a musculoskeletal condition which is a physical impairment that has a substantial and long-term adverse effect of his ability to carry out normal day-to-day activities. By order dated 20 December 2017, the respondent concedes that the claimant was a disabled person within the meaning of s.6 of the Equality Act 2010. At all material times, the respondent knew or ought to have known that the claimant was disabled within the meaning of the 2010 Act.

3.2.2 Due to the claimant's disability, he found it difficult to fulfil the duties of his role. The claimant raised his concerns 2014 in order to enable him to return to his duties.

3.2.3 The claimant asserts that the following acts amount to direct disability discrimination:

- a. Dismissing the claimant.
- b. Failing to undertake an adequate scoping exercise.
- c. Disclosing the claimant's absences as a result of his disability during the purported scoping exercise (pursuant to the respondent's transfer policy).
- d. Failing to appoint the claimant to a suitable alternative role and/or failing to transfer the claimant to a different mail centre.
- e. Failing to place the claimant on a rehabilitation plan as recommended by the claimant's GP and Occupational Health.

3.2.4 The appropriate comparator is a hypothetical comparator in the same or materially similar circumstances but for the claimant's disability.

### 3.3 Indirect Discrimination (s.19 of the Equality Act 2010) (Disability)

3.3.1 The following PCP's are relied upon by the claimant:

- a. The requirement that sickness absence relating to the disability related absences be disclosed when conducting a scoping exercise (pursuant to the respondent's transfer policy).
- b. Requiring the claimant to do tasks over and above that which is recorded in the OH Assist report dated 26 January 2017.

3.3.2 The claimant asserts that the following are the particular disadvantages suffered:

- a. Disclosing his disability related sicknesses to other potential employers during a scoping exercise within the respondent, thereby decreasing the claimant's likelihood of acquiring a new role.
- b. Dismissing the claimant as a result of capability.

3.3.3 Further and/or alternatively, the respondent's ill health retirement procedures amount to a provision, criterion or practice (PCP) which indirectly discriminates against the claimant and persons with his disability and puts the claimant and persons with his disability at a substantial disadvantage. The respondent is incapable of showing that the PCP was a proportionate means of

achieving a legitimate aim. The particular disadvantage that the claimant was placed at was that he was considered for retirement on the grounds of ill health and was subsequently ill health retired, when compared to employees who do not share his disability. The detriment which the claimant suffered as a consequence was dismissal.

3.3.4 The relevant group are disabled persons with the same or not materially different physical impediments as the claimant.

3.4 Discrimination arising from Disability (s.15 of the Equality Act 2010)

3.4.1 The claimant asserts that the following is “something arising” from disability:

- a. The claimant’s inability to undertake work over and above that described in the OH Assist report dated 26 January 2017.
- b. Disability related absences.

3.4.2 The unfavourable treatment in consequence of the above is the following:

- a. Selecting and subjecting the claimant to ill health retirement.
- b. Disclosing the claimant’s attendance record, which included his disability related absences, when purportedly undertaking a scoping exercise.

3.5 Failure to Make Reasonable Adjustments for Disability (s.20 of the Equality Act 2010)

3.5.1 The following are the PCP’s relied upon:

- a. The requirement to undertake work over and above the assessed capabilities.
- b. The requirement that disability related sickness absence be disclosed.
- c. Seniority.

3.5.2 The following are the particular disadvantages as a consequence of the above PCP’s:

- a. An inability to carry out work within the claimant’s job description.
- b. The claimant being selected for and subsequently subjected to the ill health retirement procedure.

- c. That the claimant's disability related sickness absence record be disclosed to potential new employers.
- 3.5.3 The claimant asserts that the following adjustments were reasonable to remedy the particular disadvantages as a result of the PCP's described above, however were not adopted by the respondent:
- a. A phased return to work as recommended by the claimant's GP in February 2017.
  - b. To be allocated to a role within his assessed capabilities.
  - c. An adequate scoping exercise be carried out.
  - d. Consideration of job swap or job rotation.
  - e. Offer training for appropriate roles.
  - f. Amend the seniority criteria when considering a job transfer (ie the transfer policy considers seniority and timing of an application, akin to a "first come first serve" policy, when deciding job transfers which should have been adjusted when considering the claimant's disability related circumstances).
  - g. Disability related sickness absence be withheld from disclosure.
- 3.5.4 Further, in a meeting on 1 March 2017, the claimant requested the following adjustments:
- a. To be assigned a desk-based job within Jubilee Mail Centre or any other Mail Centre within travelling distance.
  - b. To be assigned a role within the delivery caller's office or any book room based jobs.
  - c. To be assigned a role outside of the DSA area.
  - d. To be assigned a role which he was capable of performing, considering his disability.
- 3.5.5 The claimant spoke to his managers on a number of occasions about making reasonable adjustments for his disability. He asked for lighter duties and was refused this request. The claimant will say that the refusal amounts to discrimination and a failure to make reasonable adjustments.

- 3.5.6 The claimant was placed at a substantial disadvantage at work compared to those not suffering from his disability. It would have been reasonable in the circumstances for the respondent to make reasonable adjustments as other colleagues were working on lighter duties. If the respondent had made the adjustments, the claimant's situation at work and his injury would have significantly improved.
4. Note: the respondent indicated there are a number of minor matters requiring further information from the claimant which do not affect the issues, they are requesting that information. Mr Brown, Counsel for the claimant is not in a position to provide this information and an order has been made below in respect of this.

## ORDERS

### Made pursuant to the Employment Tribunal Rules 2013

1. **Amended response/Further information**
  - 1.1 Any requests by the respondent for further and better particulars must be made on or before **8 May 2018**.
  - 1.2 The claimant will respond to the requests for further and better particulars by **15 May 2018**.
2. **Statement of remedy/schedule of loss**
  - 2.1 The claimant shall prepare a schedule of loss setting out the losses he claims if any flow from the original dismissal, and an estimate of the value he places on injury to feelings and shall do so on or before **15 May 2018**.
3. **Disclosure of documents**
  - 3.1 There be list of documents with copies by **15 May 2018**.
4. **Bundle of documents**
  - 4.1 The respondent has agreed to prepare the joint bundle of documents for the hearing, duly indexed and paginated, and provide one copy to the claimant by no later than **29 May 2018**.
5. **Witness statements**
  - 5.1 It is ordered that evidence in chief in this case will be through typed witness statements. Such witness statements shall be in chronological order and in numbered paragraphs. If a document is to be referred to from the bundle the page number inserted in the relevant paragraph.

Such witness statements to confine themselves to the issues referred to above and shall not consist of hypothesis, supposition or theory. Such witness statements are to be exchanged on **8 June 2018**.

**CONSEQUENCES OF NON-COMPLIANCE**

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

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**Employment Judge Postle**

Sent to the parties on:

31 May 2018

For the Tribunal:

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