



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Jamreleigh Phillips

**Respondent:** Arden Maidstone Limited

## TELEPHONE CASE MANAGEMENT DISCUSSION

**Heard at:** London South Employment Tribunal

**On:** 7 January 2020

**Before:** Employment Judge Britton, Sitting Alone

**Representation:**

**For the Claimant:** In Person

**For the Respondent:** Mr James Tunley, Counsel

## JUDGMENT

1. The claim of unfair dismissal is dismissed for lack of unqualifying service.
2. The case based upon disability discrimination pursuant to the provisions of the Equality Act 2010 continues. See directions hereinafter set out.

## CASE MANAGEMENT SUMMARY

1. The claim (ET1) was presented to the Tribunal on 9 April 2019. It is in time and ACAS conciliation compliant. In it the Claimant set out how she was employed as a sales ledger person by the Respondent which obviously has a BMW franchise in Maidstone and how she commenced her employment on 2 January 2019. It was made clearer to me today is that at a meeting on 28 January 2019 she was dismissed but with wages in lieu of notice. This was then confirmed by a letter of the same day and thus, allowing for the notice in the lieu period, the effective date of termination was said to be 4 February 2019. Stopping there,

whether it was the 28 January or the 4 February really matters not because, of course, either way this employment lasted a very short space of time.

2. Essentially what the Claimant is pleading is that when she took the employment she had worsening problems with her wrist. Clarified before me, she did not set out in the starter form as to whether or not she needed reasonable adjustments because she did not, at that stage, know what the nature of her condition was. She was waiting for a further GP appointment which actually occurred on 31 January. However, as the days went by it became clear to her that she had difficulties in terms of her hands and her grip, and the fact that she had, inter alia, pins and needles to hold a pen or use a stapler and she has set out how remarks were made to that effect by colleagues and her immediate line-manager. As to the mainstream work, the case has been made clearer to me today which is that she had, prior to joining the Respondent, worked for some five years for a business known as Majestic doing a very similar job and without any problems despite the worsening problems with her hands. In other words, albeit she might be losing her sense of grip, it did not mean that she could not undertake the rest of the tasks of an accounts ledger clerk. She left that job in November 2018 because she felt that she needed a change. She then secured the job with Arden.
3. What she says is that she was called without any pre-warning to a one to one meeting with her line-manager, Angela Ammor, on Friday, 25 January and told that her performance was unsatisfactory. It does not seem that this focuses as such on the issue of the stapler or the pen but upon the contention that the Claimant was simply not performing satisfactory in the mainstream job. However, she was given a performance improvement plan with tasks set for assessments, so to speak, on 31 January but the following Monday, the 28 January she was summonsed to a further meeting and dismissed for poor performance. What she says is, why this sudden change and what is the point of agreeing to a PAIP if it was in good faith and then giving no opportunity at all for it to be carried out. She says that the real reason is because, having already raised an issue about her hands on the 28 January, she went further in her discussion with Ms Ammor explaining how her hands were getting worse and that the problem was long-standing and that she would need time off on 31 January to see the doctor.
4. What the Claimant says is that the inference is to be drawn that the Respondent, given that knowledge, did not wish to continue to employ the Claimant. She pleads and I articulate this, that what she told her employer was constructive knowledge of her disability. That, of course, brings in as to whether or not there is a disability. Suffice to say that I explained to the Claimant that section 6 in schedule 1 of the Equalities Act 2010, she needs to show that this condition, obviously being a physical impediment, had neither a minor or trivial impact upon her ability to undertake normal day to day activities.
5. Stopping there, as she explained to me how the problem had already existed for about two and a half years prior to the appointment with the GP on 31 January. She had been provided with a course of physio but she stopped the travelling for the purposes of the same because it really was not making any difference. She

has, in fact, since the ending of the employment been assessed by the DWP as sufficiently incapacitated by the problem with her wrist so as to be awarded employment support allowance. She has been classed as unfit to work unless or until the problem is resolved. She has for some time now been on the waiting list for surgery and is yet to receive a date but since the 31 January 2019 she has been diagnosed with having Carpel Tunnel Syndrome and, of course, it may be that there was a proceeding diagnosis that can be established once the medical notes are obtained.

6. She explained to me how she has to use wrist supports and has been provided with other aids to assist her with such as holding things because she is a danger, so to speak, in the kitchen or where she cannot work unaided because of the risk that she might drop something because of her lack of grip. It also affects her dexterity in things such as doing up the buttons on her clothing and also is very painful, and affects her in that way.
7. It may well be that the Claimant meets the definition of disability and that it was sufficiently present by the time of the dismissal to mean that it engages, for the purposes of the claim, of disability discrimination in terms of the dismissal which clearly is being brought under section 15 of the Equality Act.
8. The Claimant is an intelligent woman who has researched matters and has made plain that she brings her claim primarily on the basis of that section. In other words she has been unfavourably treated because of something arising in consequence of the disability namely Carpel Tunnel Syndrome.
9. As to the response and I bear in mind that the ET3 was submitted by Croner but that they no longer act and that Mr Tunley has been instructed for the purposes of today by the now acting solicitors, MILS Legal Limited, but nevertheless, first of all, knowledge is disputed. Mr Tunley is not proceeding with what the contention in the Croner pleading that the claim should be struck out. On that basis there clearly is an issue which will require findings of fact because the Claimant is quite clear that she made plain to Ms Ammor that the problems with her wrist and I have set out as to how.
10. It was also said that the claim needed further and better particularisation but the Claimant did her best to try and provide the Tribunal with further details of her claim because she sent in, on 4 July, further details and endeavoured to send in a large number of attachments all of which appear to me to be highly relevant but it seems that the system did not download the same. Obviously, she now needs to send those in by way of hard copies.
11. As to that document of 4 July, the whole of the same which is to be found at doc 6 on the Tribunal file needs to be copied to the Respondent's solicitors because it does not appear clear that this was ever done.
12. Mr Tunley agrees that there is no need for further and better particulars of the claim.

13. So the core issue remaining in that respect is that the Respondent does not concede at present that the Claimant is a disabled person and, of course, it is a fundamental in this case as to whether or not she was disabled because without her being so, there can be no jurisdiction. Therefore, I am going to make directions that deal with the issue of disability.
14. As to the measure of loss, the Claimant accepts that because she has received ESA and on the premise that she is unfit for work then she cannot bring a claim for loss of earnings for the period once it was decided that she was unfit for work and the date from which therefore ESA payments were going to be made. I gather that given the backdating in respect thereof the Claimant accepts that her claim is confined to one for injury to feelings. She has already looked at the adjusted Vento bands.
15. I observed and it is no more than that, that it is more probable than not that this claim were it to succeed would be at the lower end of the mid-band of Vento.
16. There is a claim for outstanding wages. This is first based on the premise that although the offer of appointment might have said the Claimant's salary was £18,000 pa, the contract of employment put it at £18,500. There are other issues relating to what amount she says is outstanding and I think that needs to be made clearer and I am providing for that.
17. As to unfair dismissal, the Claimant put a claim in to also include such claim. Of course, she lacks the two years' qualifying service. Therefore, she was written to by the Tribunal on 27 August for her to show cause by the 3 September as to why that claim should not be struck out. She did not reply but the claim has not been struck out. Today she accepts that cannot bring that claim because of lack of jurisdiction and therefore I have dismissed the claim which explains the Judgment at the top of the record of this hearing.
18. The final point to observe is that if the Claimant is a disabled person then it is my judicial opinion that this case is highly suited to Judicial Mediation. Having explained the same, the Claimant is so willing. Mr Tunley will take instructions although I accept that the Respondent may reserve its position until it has had an opportunity to consider the evidence which I am directing relating to the disability point.
19. In order that the case does not get lost, so to speak, I am hereby listing it for an intended preliminary hearing for the purposes of adjudicating on the disability point. Should the Respondent concede disability then as long as application is made, the case can be changed to a telephone hearing. It will be to give directions for the final hearing. However, if the Respondent by then has agreed to Judicial Mediation, then that case management discussion will confine itself to confirming Judicial Mediation and listing the same which obviously should be sooner rather than later given the importance of getting Judicial Mediation hearings over and done with quickly.

**CASE MANAGEMENT ORDER**  
**Pursuant to Employment Tribunals Rules of Procedure 2013**  
**Rule 29**

1. My directions are therefore as follows:-
  - (i) By Friday, **14 February 2020** the Claimant will supply to the Respondent the following:
    - a) Her medical notes from the 1 January 2017;
    - b) An impact statement as to the Carpel Tunnel Syndrome. I have explained what is required;
    - c) A schedule of loss including a detailed explanation including an explanation of what is outstanding in relation to wages and the Claimant's assessment of the sum due.
  - (ii) For the avoidance of doubt the Claimant will also copy all of the same to the Tribunal so it is on file for the purposes of any future adjudication.
  - (iii) The Respondent will reply to all of the same by Friday, **13 March 2020**. If disability remains an issue then it will set out why and any further directions that it has or alternatively, if disability is not conceded the issue can be adjudicated upon on the face of the documentation and the impact statement already provided at the hearing which I am providing for.
  - (iv) Should the Respondent concede disability then the hearing that I am providing for can be converted if the parties so wish to one by telephone. In particular, if the Respondent not having conceded disability makes plain it agrees to Judicial Mediation and then that will be the primary focus of that telephone hearing.
  - (v) However, for the time being I hereby list an attended preliminary hearing to take place on **Monday, 11 May 2020** at Montague Court, 101 London Road, West Croydon CR0 2RF commencing at **10.00am** with the primary agenda being to determine whether or not the Claimant is a disabled person.

**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. **If any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) making 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; (c) striking out the claim or the response, in whole or in part, in accordance with rule 37; (d) barring or restricting a party's participation in the proceedings; and/or (e) awarding costs in accordance with rule 74-84.

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 Britton

Dated: 13 January 2020