



EMPLOYMENT TRIBUNALS

Claimant: Mrs J E McKeown

Respondent: Wirral University Teaching Hospital NHS Foundation Trust

HELD AT: Liverpool

ON: 15 March 2017

BEFORE: Employment Judge Horne

REPRESENTATION:

Claimant: Miss L Quigley, counsel

Respondent: Mr A P Gibson, solicitor

JUDGMENT AT A PRELIMINARY HEARING

The claimant is permitted to amend her claim as follows:

1. by introducing a complaint of direct discrimination because of disability, as set out in the following discussion;
2. by introducing a complaint of discrimination arising from disability, as set out in the following discussion; and
3. by relying on provision, criterion or practice (PCP) set out in the following discussion in substitution for the PCP alleged in the claimant's solicitors' letter of 7 February 2017.

CASE MANAGEMENT ORDER

1. By 4pm on 12 April 2017, the respondent must deliver its amended ET3 response to the claimant and the tribunal.

2. Time for compliance with the case management order of 30 January 2017 is extended as follows:
 - 2.1 Paragraph 9 (respondent's disclosure) – 4pm on 3 May 2017; and
 - 2.2 Paragraph 10 (claimant's disclosures) – 4pm on 10 May 2017.

DISCUSSION

Complaints and issues

1. As a result of today's ruling, the claim now encompasses three complaints:
 - 1.1 failure to make adjustments, contrary to sections 20, 21 and 39 of the Equality Act 2010 ("EqA");
 - 1.2 direct discrimination because of disability, contrary to sections 13 and 39 of EqA; and
 - 1.3 discrimination arising from disability, contrary to sections 15 and 39 of EqA.

Duty to make adjustments

2. The claimant now puts his case in this way. The respondent's PCP, namely the requirement to work in the X-ray Department Reception, put the claimant at a substantial disadvantage compared to non-disabled persons. As an adjustment, the respondent should have transferred the claimant to the Fracture Clinic on a substantive basis, alternatively, for a trial period.
3. It is the claimant's case that the respondent breached the duty to make adjustments continuously from the initial refusal to allow the claimant to transfer (sometime prior to May 2015) until the date of the claim.
4. The claimant's solicitors' letter alleged that the respondent should also have made the separate adjustment of carrying out a risk assessment. Counsel for the claimant indicated that that contention is no longer pursued.

Direct discrimination

5. The claimant alleges that the respondent treated her less favourably than others would have been treated, by failing to allow her to transfer to the Fracture Clinic either substantively or on a trial basis. Her case is that the failure to transfer her was because of her disability, as opposed to any evidence of actual risk.
6. It should be noted that this claim relates solely to the period of time after 15 June 2016. The Stage 3 grievance outcome had recommended a risk assessment with a view to a trial period in the Fracture Clinic. The decision-maker (whose thought processes fall to be scrutinised) is the person who was responsible for deciding whether or not to allow a trial period.

Discrimination arising from disability

7. The section 15 complaint is based on exactly the same treatment over the same time period. The complaint is pursued in the event that the tribunal finds that the respondent's reason for not allowing the claimant to transfer was its perception of risk to the claimant at the Fracture Clinic. That perception

arose in consequence of the claimant's disability. Unless justified, the treatment would be discriminatory.

Disputed and agreed decisions

8. The respondent did not dispute the amendment to the PCP, but opposed the introduction of the section 13 and 15 complaints. I gave oral reasons for allowing those two amendments. Written reasons will not be provided unless a party makes a request in writing within 14 days of the date on which this judgment was sent to the parties.
9. Once the disputed amendment issue had been resolved, the case management orders were made by consent.

15 March 2017

Employment Judge Horne

SENT TO THE PARTIES ON

21 March 2017

FOR THE TRIBUNAL OFFICE