



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112604/2018

5

Held in Glasgow on 4 October 2018

Employment Judge: W A Meiklejohn

10 **Mr Steven McCullagh**

Claimant
Represented by:
Mr G Fletcher -
Solicitor

15 **Analog Republic Limited**

Respondent
No appearance and
No representation

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Employment Tribunal is that:

(1) The Claimant's claim of (i) unfair dismissal, (ii) discrimination arising from disability and (iii) failure to make reasonable adjustments succeed, and

25 (2) A Hearing on Remedy will be fixed to determine the amount of compensation to be awarded to the Claimant.

REASONS

1. This case came before me for a Final Hearing on 4 October 2018. Mr Fletcher appeared for the claimant.
- 30 2. The Respondent had not lodged an ET3 response form, and did not attend the Hearing on 4 October 2018.
3. Mr Fletcher lodged a bundle of documents for the Claimant, extending to 71 pages. This included (a) a witness statement from the Claimant (pages 66-

E.T. Z4 (WR)

69) which reflected the contents of the Paper Apart to the Claimant's ET1 claim form and (b) a Disability Impact Statement from the Claimant which detailed the effects of the Claimant's mental impairments (depression and adjustment disorder) on his ability to carry out normal day to day activities.

5

4. The Claimant gave evidence. He adopted the said witness statement as a statement of his evidence to the Tribunal. Similarly, he adopted the Disability Impact Statement as forming part of his evidence to the Tribunal.

10

5. I found the Claimant to be a credible witness. I was satisfied that the Claimant was disabled within the meaning of Section 6 (1) of the Equality Act 2010 ("EqA"). He suffered from mental impairments which had a substantial and long-term adverse effect on his ability to carry out normal day to day activities. This was supported by a letter from the Claimant's GP dated 10 September 2018 (page 40).

15

6. In the absence of any evidence from the Respondent that their unfavourable treatment of the claimant as described in the Claimant's ET1 and witness statement was a proportionate means of achieving a legitimate aim (per section 15 (1)(b) EqA), the Claimant's claim of discrimination arising from disability under section 15 EqA succeeded.

20

7. The work requirements placed on the Claimant by the Respondent as described in his ET1 and witness statement constituted a provision, criterion or practice ("PCP") which placed a disabled person at a substantial disadvantage in comparison with persons who are not disabled. That placed on the Respondent a duty to make reasonable adjustments being such steps as it was reasonable to have to take to avoid the disadvantage (section 20(3) EqA).

25

30

8. The Respondent failed to comply with that duty. No adjustments were made. Accordingly the Respondent discriminated against the Claimant within the meaning of section 21 (2) EqA.

9. In terms of section 98(1) of the Employment Rights Act 1996 it was for the Respondent as employer to show a potentially fair reason for the Claimant's dismissal. They had not done so and accordingly the Claimant's claim of unfair dismissal succeeded.

5

10. I decided that I did not have sufficient information to deal with remedy. In particular I believed that further medical evidence would be required (a) to support the statement in the Claimant's GP's letter of 10 September 2018 that the Claimant's dismissal had given rise to a material exacerbation of his conditions, (b) to provide an assessment of when the Claimant might be likely to be fit for work and (c) to enable an assessment to be made of the nature and extent of the injury to feelings suffered by the Claimant.

10

11. Accordingly a Hearing on Remedy will require to be fixed. One day should be sufficient for this.

15

12. The Claimant agreed to provide, in advance of the Hearing on Remedy, a revised Schedule of Loss giving credit for the Employment and Support Allowance he had received (that benefit not being covered by the Employment Protection (Recoupment of Benefit) Regulations 1996).

20

Employment Judge: WA Meiklejohn
Date of Judgment: 11 October 2018
Entered in register: 12 October 2018
and copied to parties

25