



# EMPLOYMENT TRIBUNALS

## AT AN OPEN ATTENDED PRELIMINARY HEARING

**Claimant:** Mr D Nightingale

**Respondent:** CBRE Managed Services Ltd

**Heard at:** Nottingham                      **On:** Thursday 13 April 2017

**Before:** Employment Judge P Britton (sitting alone)

**Representation**

**Claimant:** Mr D Cooper, Communication Workers' Union

**Respondent:** Mr J Boyd of Counsel

## JUDGMENT

1. The claim based upon disability discrimination pursuant to the Equality Act 2010 is dismissed in its entirety upon withdrawal.
2. I allow an amendment to the claim to include one of breach of contract (failure to pay notice pay).
3. Thus, for the avoidance of doubt, the claims that go forward to the Hearing are those of unfair dismissal and breach of contract.
4. Orders are hereinafter set out.

## REASONS

### Introduction

1. I heard a first telephone case management discussion in this matter on 20 December 2016. I set out what the case was about and I made directions. Therefore I do not need to rehearse it.
2. I deliberately kept listed the current 3 day hearing to take place at Nottingham commencing on 15 May 2017.
3. Suffice it to say that thereafter the Claimant made two attempts to provide further and better particulars and sent in to the tribunal, as I had directed, the entirety of his medical notes, and a statement relating to his disability backed up by one from his wife, Mrs Nightingale. Also, he provided me with what has turned out to be a lot of the material documentation as to the disciplinary process within the Respondent and which led to his summary dismissal.

4. In the run up to today, on 5 April, the Respondent conceded that the Claimant was a disabled person by reason of his depression. The issue as far as it was concerned is that there appeared to be no causative link between his disability and any reliance on any manifestation of it in relation to the incident which occurred in this matter and which led to the Claimant's dismissal and which was on Saturday 6 August 2016.

5. I heard considerable discussion this morning and suffice it to say that having taken instructions, Mr Cooper on behalf of the Claimant has withdrawn the claim based upon disability discrimination. That is because it is clear from the medical evidence that there is not a causative link on the face of it between the Claimant's behaviour on the day in question and the disability.

6. Mr Boyd was also instructed to invite me to dismiss the claim of unfair dismissal as having no reasonable prospect of success or order a deposit to be paid on the basis that it only had little reasonable prospect of success. Therefore I have been taken to the documentation relating to the disciplinary process. However, I have the following observations to make. They do not bind the tribunal and they are only to justify my decision today. They are as follows.

7. On the face of it, the complaint (if that is the right word) which led to the investigation as to what happened on 6 August 2016 was anonymous. However, in relation to the Claimant's contention that although that which he did on reflection was a breach of health and safety protocol, no statements appear to have been taken from the security officer on duty on the day in question (Barbara) and who is referred to by the Claimant in the first interview which was undertaken with him by the Respondent in this matter on 12 August 2016.

8. Also, I cannot see that any additional statement was taken from his work mate (Lucas Moss) as to whether in fact there was anybody in the vicinity such as to be at risk when the incident took place. The evidence, and I say no more than that, appears to be that the grass upon which he dropped the light fittings did not have anybody on it at the material time, and the adjacent car park was virtually empty. Thus, albeit the Claimant should not have dropped the light fittings when he did, having made a conscious decision however that he thought it was safe so to do and given the circumstances he otherwise was in difficulty about in terms of manoeuvring the light fittings downstairs, the issue becomes as to whether or not it was too harsh a penalty to summarily dismiss him.

9. I consider that bearing in mind he had 20 years of service at the material time and was aged 63 and had an unblemished record with the Respondent and its predecessors in terms of the TUPES, the issue becomes as to whether the employer gave sufficient thought<sup>1</sup> in the circumstances as to that and also made sufficient enquiry of ie Barbara and Mr Moss before making its decision that that which he did so seriously breached health and safety, putting the public at risk, as to warrant summary dismissal.

10. That of course is a matter for a Judge sitting at the main hearing and it is not for me today. But it means on my analysis of the papers before me today that I therefore do not conclude that a) the case has no reasonable prospect of success, or b) that it only has little reasonable prospect of success. Therefore, I do not strike it out or make a deposit order.

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<sup>1</sup> Applying the range of reasonable responses test.

11. That brings me to my Orders of directions.

## ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The last existing listed day of what was going to be a 3 day hearing before a full tribunal will now be used for the purposes of the hearing of the remaining issues with a Judge sitting alone. For the avoidance of doubt, this means that the hearing will proceed on **Wednesday 17 May 2017 at Nottingham before a Judge sitting alone. The parties are to be in attendance for a prompt start at 10 am.**

2. As to existing directions, the bundle is more or less complete, save that obviously the disciplinary procedures will need to go in it and any additional documentation not already therein and which is relevant and necessary for the adjudication of the issues. Thus:

2.1 the finalised trial bundle will be supplied by the Respondent to the Claimant by **Friday 28 April 2017.**

2.2 The parties will exchange witness statements on **Friday 12 May 2017.**

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Employment Judge Britton

Date:13 April 2017

JUDGMENT, REASONS AND ORDERS SENT TO THE PARTIES ON

.....18 April 2017.....

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FOR THE TRIBUNAL OFFICE