



HR Broadcast – Redundancy and disability

I read an article recently concerning the case of *Charlesworth v Dransfields Engineering Service Limited* (2017) UKEAT/0197/16/JOJ.

The case relates to a redundancy situation back in 2014 but the appeal was not heard by the Employment Appeal Tribunal (EAT) until January 2017. The situation is one that we have frequently given advice on; an employee was absent from work for some time, and this absence allowed the respondent to identify the possibility of restructuring the business in a way that deleted the absent employee's post from the business and therefore saved costs (something like £40,000 in this case).

The employee (Charlesworth) who made the claim was employed by the respondent (Dransfields Engineering Service Limited) as a Branch Manager. Importantly the business was not achieving any level of profitability. The claimant developed renal cancer and was absent for two months due to having an operation. As you will be aware from previous Broadcasts the condition of cancer is automatically a protected characteristic in terms of disability.

After the period of illness the employee returned to work fit and was able to fulfil his role, however the employer, having undertaken a review, commenced consultation over the proposal for redundancy for the Branch Manager and unfortunately he was eventually dismissed on the ground of redundancy.

The case went to an Employment Tribunal (ET), at which the claimant argued that this was a sham redundancy in that there was no redundancy situation, and that the real reason for the dismissal was because of the disability. This claim was rejected by the ET. The ET found that the possibility of a restructuring that would enable cost savings to be made became apparent as a result of the claimant's absence. However, the ET concluded that the claimant's absence resulting from his disability was not an operative cause of his dismissal for redundancy.

The claimant appealed his case to the EAT on the basis that the original ET had failed to apply the correct causation test when dealing with Equality Act 2010 s.15. It was submitted that a cause or influence (however significant) is sufficient to constitute or to fulfil that requirement that it is "because of something arising in consequence of the disability". It was argued that any cause, even if it does not operate on the mind of the putative discriminator and is therefore not an effective cause, is sufficient to satisfy section 15.

The EAT held that the causation requirement in Equality Act 2010 s.15 involved a two-stage approach.

1. There must be something arising in consequence of the disability;
2. The unfavourable treatment must be because of that something.



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The question raised by the appeal was whether something less than an operative cause or influence is sufficient to satisfy the requirement that the unfavourable treatment is because of the relevant something. To the extent that it was being argued that a mere influence is sufficient, such an argument was not accepted by the EAT. The statute requires the unfavourable treatment to be because of something; nothing less will do. Provided the something is an effective cause (though it need not be the sole or the main cause of the unfavourable treatment), the causal test is established.

In this case, the ET had expressly accepted that in considering an Equality Act 2010 s.15 complaint it is not necessary for the claimant's disability to be the cause of the respondent's action, and that a cause need not be the only or main cause provided it is an effective cause. The EAT stated that there was no error of law in the ET's approach.

The ET was entitled to ask whether the claimant's absence, which it accepted arose in consequence of his disability, was an effective cause of the decision to dismiss him. To put that question another way, as the tribunal did, was the claimant's sick leave one of the effective causes of his dismissal?

The ET accepted that there was a link between the claimant's absence through illness and the fact that he was dismissed, the link being that his absence afforded the respondent an opportunity to observe that it could manage

without anybody fulfilling the claimant's role as Branch Manager. Nevertheless, the ET said that was not the same as saying that the claimant was dismissed because of his absence. This was a case where, on the facts found by this tribunal, it felt able to draw a distinction between the context within which the events occurred and those matters that were causative.

It is worth noting that the EAT commented that there will doubtless be many cases where an absence is the cause of a conclusion that the employer is able to manage without a particular employee and in those circumstances is likely to be an effective cause of a decision to dismiss even if not the main cause. This, however, does not detract from the possibility in a particular case or on particular facts, that absence is merely part of the context and not an effective cause.