Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10/JOJ

Keywords: ***Disability Discrimination – Reasonable Adjustments – Re-deployment - Whether Adjustment must be Effective***

C went on long term sick leave after a period of alleged bullying by his line manager in the security deparment. C's grievance about the bullying was rejected. R refused to consider C's ongoing concerns and C resigned. C claimed that R had failed to make reasonable adjustments. The ET upheld the claim and R appealed.

FACTS

C had been employed by R for many years. In 2006 his relationship with his line manager broke down. He was signed off work from October 2006 with stress and never returned. After commencing sick leave C lodged a grievance that alleged he had been bullied. R rejected the grievance. R's occupational health department ("OH") advised that C was fit to return to work and so R told C that he would have to return work in the security department. However, after another meeting with C, OH advised that although R took the view that the grievance had been resolved C did not share that view and that for C the problem, rightly or wrongly, still existed. OH advised that, so long as C held this view, he would not be able to return to work in the security department. Initially R took the view that the grievance had been dealt with and that if C could not work in the security department he should be dismissed. However, In late 2008 C was placed on the redeployment register for 3 months but no post was found. The line manager who had allegedly bullied C then left the security department. As a result C informed R that he could now return to work but that he would like to discuss his ongoing concerns with R. Unfortunately R refused to enter into any discussions with C and C then became unfit for work again. This time OH could not say when C would be fit to return so R dismissed him for capability.

HELD

The ET held that R should have made the reasonable adjustment of placing C on the redeployment register in January 2008. The ET concluded that had R done so there was a real prospect of C returning to work. R challenged this finding on the basis that C had not proved facts from which the ET could conclude that there was a good or real prospect that C would have been redeployed. The EAT rejected R's submissions. Firstly it was sufficient if there was only "a prospect" of redeployment. It did not need to be a "good" or "real" prospect. Secondly the ET was only having to decide whether, as at January 2008, there was a prospect that a post suitable for C would become available. The EAT held that the mere fact that R was a very large employer (15,000) employees was sufficient on its own to entitle the ET to come to the conclusion that there was a good prospect that a post for C would become available.

COMMENT

This is an important case for those considering a respondent's duty to look for an alternative post for a disabled person who is unable to perform his/her own role. This case is a reminder that the effectiveness of an adjustment should be considered as at the time it was required. Many employers seek to argue that since no suitable post ever became available, the adjustment of placing the employee on the redeployment register was not required because it would have made no difference. This is unlikely to be a sufficient defence, particularly where larger employers are concerned. If a person is placed on a large employer's re-deployment register there will, more often that not, be a prospect of a vacancy becoming available. In these circumstances evidence, with hindsight, that no vacancies did actually arise is only likely to be relevant to quantum.