



EMPLOYMENT TRIBUNALS

Claimant: Mr B Bendell

Respondent: Mulalley & Co Ltd

Heard at: East London Hearing Centre **On:** 14 September 2021

Before: Employment Judge O'Brien sitting alone

Representation:

Claimant: Mr E Macdonald of Counsel

Respondent: Ms B Balmelli of Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that

1. The claimant was at all material times disabled as defined in s6 of the Equality Act 2010.

REASONS

1 *This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are set out below. Both parties were content with the way in which the hearing was held.*

2 On 3 April 2020, the claimant presented a claim for disability discrimination, and on 7 May 2020 presented further complaints of disability discrimination and a claim for unfair dismissal. The respondent resists all of the claims. In particular, the respondent does not accept that the claimant is disabled within the meaning of the Equality Act 2010.

3 Employment Judge Gardiner held a telephone preliminary hearing on 2 November 2020. The claims and issues are described in more detail in his note of that hearing. Importantly, Judge Gardener gave directions for resolution of the disability issue at an open preliminary hearing, if not by agreement. This was that hearing.

THE HEARING

4 I heard evidence from the claimant, based on a written disability impact statement, and oral submissions from Counsel for both parties. Mr Macdonald also provided a helpful written skeleton argument. Insufficient time remained thereafter to deliberate and hand down judgment. It was necessary therefore to reserve my decision. A number of factors have since unavoidably delayed this decision, for which I apologise.

THE ISSUES

5 Section 6 of the Equality Act 2010 (EA) defines disability as a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities. An effect of an impairment is long-term if it has lasted for or is likely to last for at least 12 months or is likely to last the rest of the affected person's life. If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is treated as continuing to have an effect if the effect is likely to recur. The effect of medication is to be disregarded when assessing the effects of an impairment. Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a Coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities.

6 It is not in dispute that the claimant has dyslexia, a diagnosis of which he first received in 1993, and that dyslexia is an impairment potentially qualifying as a disability for the purposes of the Equality Act 2010. The issue taken by the respondent is whether the claimant's dyslexia had at the material time a substantial effect on his ability to carry out normal day-to-day activities.

7 The claimant has also been diagnosed with anxiety. Mention of anxiety can be found in the documentation from around 2008, and it is said that he has throughout the material period had symptoms of anxiety. The claimant does not rely on anxiety per se as a disability, but argues instead that the anxiety is a result of his dyslexia and that the effects of anxiety are therefore secondary effects of dyslexia which can and should be taken into account when deciding whether his dyslexia is a disability. The respondent does not accept the causal connection.

FINDINGS OF FACT

8 In order to determine the issues as agreed between the parties, I made following findings of fact, resolving any disputes on the balance of probabilities.

9 The claimant is a twin. His brother does not have dyslexia. The two attended different high schools because of their apparently differing academic abilities. I say 'apparently' because, as is clear from reports to which I refer again below, the claimant's overall performance masks relative strengths. In any event, the claimant has with considerable hard work been able to gain qualifications to Masters level.

10 A psychological report undertaken on the claimant on 18 February 2002 in order for him to access support in later learning notes that he showed weaknesses in verbal memory, long and short term, and visual sequencing, in contrast to strengths in visual-spatial reasoning, and that he experienced related difficulties with spelling, written expression, and the time it took him to read.

11 The claimant has provided a disability impact statement which deals with both the direct and alleged secondary effects of his dyslexia. Regarding the former, he states that he is unable to read and write as quickly others who do not have dyslexia. The claimant explains how it takes him longer to read emails and written documents and that he has a lower processing speed at which he can digest the information, meaning that it takes him a longer amount of time to draft written documents such as emails, reports and letters. He finds it difficult to make and receive telephone calls in open plan office and to read aloud. He finds it particularly difficult putting thoughts down in writing, verbal articulation when not prepared, and remembering multiple details such as lists of items. He had difficulty recalling lengthy scenarios in examinations, and has to re-read documents in order fully to absorb what they say. The claimant is unable to fully absorb feedback unless structured as answers to questions from him.

12 The claimant described in oral evidence the difficulty he would have digesting written information not previously provided to him (for instance an agenda or other document provided to him for the first time at a meeting). Whilst unable to precisely quantify the disparity he was clear that he would generally take him a lot longer than the other participants to read and absorb the information.

13 These are all effects entirely consistent with the 2002 report and I accept the claimant's evidence in this regard.

14 As for secondary effects, the claimant reports that he experiences increased levels of stress and anxiety, particularly when put on the spot, speaking in front of colleagues, provided information at short notice, or if invited to meetings at late notice. I should observe that his difficulty in making and receiving telephone calls in an open plan office perhaps appears also to be a secondary rather than primary effect of his dyslexia. He described anxiety at participating in a recent Burns Night event organised by friends because he thought he would be called upon to tell a story.

15 There is no medical evidence that the claimant's anxiety is solely caused by his dyslexia. Indeed, the claimant said in oral evidence that he had always linked his anxiety to his work environment and feelings of not being supported. These are matters which go further than and/or are too remote from his dyslexia to suggest the latter is causative of all of the claimant's anxiety. However, a CBT Therapist's report dated 26 January 2021 materially states as follows:

'Bradley has undergone two assessments for dyslexia (1986, 2002), due to he struggled at school and required extra support in mainstream school (tutoring). As a consequence of dyslexia he struggles with an array of difficulties including; short term verbal memory loss, difficulties with visual sequencing and verbal comprehension. Dyslexia can cause one to be delayed in areas such as reading documents, both in a paper and digital format. People with dyslexia also suffer with a delay in their information processing, therefore taking them longer to not only read, but to understand and process information they are presented with. For Bradley specifically this will mean that tasks such as writing emails, reports and letters will take longer than others without dyslexia. He will also suffer from heightened arousal levels due to this causing spikes in stress and anxiety linked to particular tasks/situations, for example, being asked to speak in front of colleagues, being given information to work with at a short notice, being asked to attend a meeting at short notice and being put on the spot to answer a question.

From engaging in assessment and therapy with myself I know that Bradley struggles with a number of task such as; making and receiving calls in an open plan office, reading aloud, being expected to complete tasks at the same speed as others who do not have dyslexia, writing down thoughts, articulating in a verbal manner (especially when he is not prepared) and remembering multiple things at a time. All of these activities can be heightened further by stress and anxiety, which is well documented to be a feature alongside dyslexia, literature suggests to us that the most common emotional symptom alongside dyslexia is anxiety. Anxiety is said to be a secondary symptom of dyslexia.

16 Not only does this report reinforce my conclusions above on the direct effects on the claimant of his dyslexia but also supports his claim to experience anxiety when placed in situations when the primary effects of his dyslexia are likely to be exposed to others present. Therefore (and to the extent necessary to decide disability), I am unable to find on balance that the claimant's anxiety is caused solely or always by his dyslexia but I do accept on balance that the anxiety he experiences when answering the phone in open plan offices, when attending meetings and when otherwise expected to digest and respond immediately to material new to him is a secondary effect of his dyslexia.

17 Reading, writing, using written information and communicating in writing are all normal day-to-day activities. Taking part in meetings is an activity not limited to work and is a normal day-to-day activity. Similarly, speaking on the telephone is a normal day-to-day activity. Each of these is adversely impacted by the effects identified above of the claimant's dyslexia.

18 The claimant describes in his statement some coping strategies he has adopted, in particular to avoid the anxiety arising from his dyslexia. He properly accepted in cross-examination that some are effective to some extent. For instance, using the mobile phone provided to him by work to make and take phone calls in a separate room would avoid the anxiety experienced doing so in an open plan office. He accepted that preparation for meetings alleviated the anxiety felt by the claimant. However, he was clear that it did not do so completely. Moreover, I am entitled to and do find that the length of time it took the claimant to prepare sufficiently to reduce his anxiety by a significant amount was itself a substantial, adverse effect on the claimant's ability to carry out normal day-to-day activities. In any event, none of these coping strategies addressed (or sufficiently addressed) the primary effects of his dyslexia.

19 Consequently, for the reasons given I find that the claimant is disabled within the meaning of s6 of the Equality Act 2010.

**Employment Judge O'Brien
Date: 17 November 2021**