

**IN THE LONDON CENTRAL
EMPLOYMENT TRIBUNAL**

CASE NO: 2201228/2014

BETWEEN:

MR E LEARMAN

Claimant

-and-

BIOMED CENTRAL

Respondent

Disability impact statement

This document has been written to accompany the document which had been submitted on 26.08.2014 'Discrimination arising from a disability'.

1. I would like to confirm that in July and August 2013 I had contacted my Line Manager, Ms Natalie Shon, and the HR advisor, Ms Lisa Marie Reddon, about the possibility of submitting a Flexible Working Hours application after approaching Ms Shon, which concerns that my symptoms of depression could have an effect on my day to day activities and attendance.
2. In July and August 2013, I had been absent from work intermittently over the course of several weeks due to insomnia and fatigue. I believe this was a result of long term depression which my GP had described antidepressants for since January 2013. At the time I'd had concerns about changes in my personal after learning that partner was pregnant and about the FraX Premutation I had been tested for that appeared to show a link between symptoms relating to Fragile X syndrome and associated disorders such as a depression.
3. My symptoms of depressions were mainly experienced often as feelings of despair, alienation, isolation, low mood, confusion, fatigue, insomnia and anxiety which I felt effected my ability to concentrate and organise tasks in a fast or efficient manner, and which sometimes led to frustration and anger. This effected my self-esteem and ability to build friendships with my colleagues within the department as a result of appearing unhappy or angry, and where this didn't project a 'positive attitude' which Ms Shon had suggested, and where at certain times I'd felt ignored or unpopular among the friendships that the senior members had with one another.
4. In July and August 2013, Ms Shon had expressed concerns about my attendance and email responses to chase emails from other departments. I'd understood that chase emails were received daily from other departments, Journal Development Editors, the Production vendor SPI, contributing authors and customer services. Due to the high volume of articles in circulation and complications with

communications between different staff and updates or requests sent by authors concerning delays or errors, it was often difficult and time consuming to identify and resolve any issues which occurred. Communication between the JDEs and SPI could be obstructed due to authors not responding or receiving updates, or errors within the production process which would need to be investigated. Authors might contact customer services or the JDE, or the JDE may have failed to inform the Production Editor of changes or delays to the article publication. I'd explained to Ms Shon that I was aware of delays or issues being escalated to her and understood the process involved and would work to improve upon this, but I had not been made aware of any specific incidents besides the typical requests or complaints we'd received routinely. Both myself and Ms Shon had been aware of a backlog of emails and articles that needed to be monitored since the start of the new year due to an increase overall of submissions in the department and where emails had accumulated during my annual leave and absences from work.

5. In September and October 2013, following several disagreements over personal or trivial matters with my colleagues, in which Ms Shon had accused me of being 'offensive' and 'unprofessional', but which I'd denied, she had presented the Performance Improvement Plan. This had partly been in response to my Line Manager's demand that I complete several objectives on top of the work that I was involved with; concerning the Department Meeting proposal with Luke Prescott and Christina Manassa, issues with Archives of Public Health ISSN and the journal launch with the Production Editor Matthew Carey scheduled for 10.01.2014.
6. Since July and August 2013, I had expressed an interest to work from home in order to reduce my stress and manage my symptoms but also to assist my partner with the baby when it was expected to be born in November 2013. Ms Shon had insisted that it was imperative that we establish an achievable set of objectives before submitting the Flexible Working Hours request but which I felt was paradoxical and peripheral to my needs and circumstances at that time.
7. I refused to sign the Performance Improvement Plan on the grounds that it appeared to be a disciplinary procedure which undermined my performance, that there were no examples or evidence to support the objectives and I was afraid of being penalised under the objectives which merely described my day to day tasks. Ms Shon and Ms Reddon had insisted there were issues with my performance concerning my attitude and the chase emails, and the objectives were reasonable and achievable.
8. In reaction to this pressure and feelings of anger and stress following these accusations of offensive and unprofessional behaviour, which I had wanted to resolve, I had sent a children's cartoon showing Batman appearing to be touching a woman inappropriately. I had sent this as a joke after Ms Shon had requested I send an email to record my time of departure after working overtime. I had not meant the email to be sexually suggestive as an innuendo or to be sexually explicit or offensive, but only to amuse Ms Shon where she had seemed angry and upset with me. I had hoped to try to apologise to her for our recent disagreements over the past two months the week after this incident.
9. On the same weekend, I had taken three days off from work after the birth date of my son on 17.11.2013. On my return to work, after another meeting with my Ms Shon and Ms Reddon to discuss the PIP and which I had declined to sign the agreement, I was approached by the HR Manager Ms Hayley Johns and informed that there would be an investigation into the allegations of misconduct

and inappropriate behaviour towards Ms Shon. I had informed the investigating senior manager Daniel Marshal that the email was a joke and a children's cartoon but I could understand how the email could be offensive. I was prohibited from discussing the matter with Ms Shon otherwise I would be suspended from work.

10. I'd contacted Ms Shon and Ms Reddon and explained that I'd felt concerned there could be an overlap or bias between the two procedures but was told that these were separate procedures. I had asked the PIP to be edited to remove any criticisms which I felt were untrue and undermined my performance, specifically the terms 'negative feedback' and 'past issues', which Ms Shon later referred to as 'general issues'. Ms Shon had insisted the document was necessary for monitoring my performance and that it was compulsory for me to have these objectives, which after these had been edited I had agreed were 'reasonable' and 'achievable'.
11. I had agreed to sign the document following the investigation of misconduct in December 2013 in order to resolve and satisfy any issues with Ms Shon and ensure that it did not effect the decision to implement my Flexible Working Hours application. Ms Reddon had assured me that this was an informal procedure and further disciplinary action was unlikely.
12. The letter from my GP received in November 2013 had mentioned that I had been prescribed medication for depression and anxiety but did not supply any medical records. Ms Reddon had said she would organise an appointment with the Occupational Health Therapist but that I should sign the PIP and proceed with the investigation to the allegations despite this.
13. Due to my symptoms of depression, feelings of confusion and anxiety, I had agreed to sign the PIP in order to resolve our ongoing disagreements about my conduct and the objectives, and with the encouragement of Ms Reddon and Ms Shon.
14. In January 2014, due to difficulties in personal, I'd felt my depression had worsened and it effected my time-keeping during the week returning to work. I had been warned by Ms Reddon and Ms Shon about this with further disciplinary action and that it would be unlikely that they would accept my Flexible Working Hours application due to issues with my performance as had been discussed with the PIP. Ms Reddon had said the OHT assessment showed I was only suffering from anxiety to which I had responded that his examination was insufficient and he had not examined my medical history, but which Ms Reddon had disregarded.
15. Feeling angry and distraught, I had sent an email to my colleagues, Russell Etherington and Thomas Marsh, and Ms Shon containing instructions on issues and articles which needed to be monitored during my paternity leave between. This contained a URL www.fuckthisshit.co.uk as a joke pertaining to a youtube video we had watched online.
16. During my paternity leave between 13.01.2014 to 24.01.2014 I had sent several emails to the Heads of Production, Ms Shon and HR team about my issues with the PIP and how this had undermined my performance and effected my mental health issues. This included letters I had sent to my partner and her mother where I had denied that I had mental health issues and was capable of doing my work despite my problems.

17. During the meeting to discuss the appeal for the Flexible Working Hours application on 27.01.2014 with the HR team, the Head of Production Ann Marie Ainsworth and investigating manager Jane McDonald, I had discussed my symptoms and reasons for submitting the application, which had been to help manage my symptoms and support my partner with the baby. I was told that I was not allowed to discuss the OHT assessment any further but that I could submit a grievance against my Line Manager if I wished.
18. On 30.01.2014 I was told by my Line Manager during a one to one that the objectives had been satisfied. On 31.01.2014 I had received an email from the Head of Production Operations Peter-Paul Delsmon to attend a meeting with him and the HR Manager Frances Firth at 5pm but I was unable to attend.
19. On 03.02.2014 I was contacted again with an email by Mr Delsmon to meet with him and Ms Firth immediately before starting work. I was informed by Mr Delsmon that my behaviour and performance was unacceptable, that my Line Manager was afraid of me and felt she could no longer work with me, and that because I had sent the second email on 10.01.2014 that this was Gross Misconduct and it was grounds for summary dismissal. Ms Firth had informed me that I would not be allowed to appeal this decision. The dismissal letter had referred to numerous issues with my performance as had been addressed by the PIP but which I had failed to achieve.
20. During the appeal to the HR manager Ms Johns and the investigating manager Mr Nick Damianou, the reasons for my summary dismissal were changed where that had not been an investigating into the allegation of Gross Misconduct but that conduct and communication were outlined in the PIP. The HR Manager Ms Firth has also insisted in an email communication about this appeal that the reason for the dismissal had been the email I had sent.
21. I'd felt that had there been a proper investigation, as would have been accordance with both the Springer company policies under the terms of the Capability Policy and Disciplinary Procedure and ACAS guidelines, that this may have produced further evidence to show that the PIP was in fact unfairly administered, had resulted in obstructing my Flexible Working Hours application, had caused me unnecessary distress and anxiety and which was later used in the decision for summary dismissal before any further action could be taken.