

EVIDENCE PROVIDED BY

TESCO LAWYERS

IN PENSION OMBUDSMAN

COMPLAINT,

PO-1499

February 2012 - 13 July
2015

PETER STILL

✓

TESCO STORES LTD

HR PERSONNEL DIRECTOR
JUDITH NELSON

LAURA WATSON (MILWAU)

SQUIRE PATTON BOGGS
LEEDS

① Record of CONVERSATIONAL
DISMISSAL

② Duplicate 3 pages of PRINT
FOR JOB CENTRE PLUS
12/10/2010 19/11/2010

total pages 4



TESCO STORES LIMITED

RECORD OF CONTRACTUAL DISMISSAL Short term persistent absence

Following your unacceptable level of attendance at work, your employment position has been carefully considered. Having taken full account of your comments at the disciplinary meeting held on 13/5/10, you are advised that you are contractually dismissed in accordance with the Grievance and Disciplinary Procedures for incapability due to your inability to attend work to an acceptable level. Your absence level over the last 26 weeks has been 56% covering 6 occasions and you have received the following warnings relating to your unacceptable level of attendance

Stage 1	-	Date	<u> / / </u>
Stage 2	-	Date	<u> / / </u>
Stage 3	-	Date	<u> / / </u>
Stage 3 - Fast Tracked		Date	<u>13/11/09</u> (3 times on process in rolling 2yrs)

Your last day of employment will be 13/5/10. As soon as is practical you will receive all wages owed to you along with any payment for holiday if appropriate and 1 weeks pay in lieu of notice.

If you wish to appeal against this Contractual Dismissal, you should refer to the Grievance and Disciplinary Procedures which explain what you should do.

THIS CONTRACTUAL DISMISSAL IS ISSUED BY:-

Name (please print): GUY HENDERSON
 Job Title: SHIFT MANAGER / DISMISSING OFFICER
 DC Name and Number: LIVINGSTON DC
 Signature: [Signature] Date: 13/5/10

THIS CONTRACTUAL DISMISSAL IS ACKNOWLEDGED BY:-

EMPLOYEE DETAILS
 Name (please print): PETER STU
 Job Title: WAREHOUSE OPERATIVE
 DC Name and Number: LIVINGSTON DC
 Signature: [Signature] Date: 13/5/10

EMPLOYEE REPRESENTATIVE

Name (please print): DECLINED A REP
 Signature: _____ Date: _____

Dupied

Job Title: DELIVERY DRIVER

Job Ref: BTG/10263

Location: BATHGATE, WEST LOTHIAN

Hours: OVER FOUR DAYS (average per week)

Wage: MEETS NATIONAL MINIMUM WAGE

Pension: NO DETAILS HELD

Work Pattern: EVENINGS, WEEKENDS

Duration: PERMANENT

Employer:

DOMINO'S PIZZA

Description:

Delivery driver wanted for Dominos Pizza. Duties include delivering food to customers, full training given. Driving licence must not have more than 6 points or any drink driving convictions.

How to Apply:

You can apply for this job by sending a CV/written application to Zaffar Ahmed at Domino's Pizza, 23 North Bridge Street, BATHGATE, West Lothian, EH48 4PJ or to zaf4r001@aol.com by using a computer with internet access.

Additional Criteria:

If you are looking for work, Tax Credits could top up your earnings
This vacancy meets the requirements of the National Minimum Wage Act
If you are unable to apply for the job advertised by the method displayed, due to a health condition or disability, please contact Jobcentre Plus for further assistance.

Jobs also at

www.Direct.gov.uk/jobseekers

12/10/10 09:22

~~Outlets~~

JOB TITLE: VEHICLE WASHIER/VALET

Job Ref: BTG/10107

Location: BATHGATE, LIVINGSTON W
LOTHIAN

Hours: UP TO 20 HRS PER WEEK, , 5
DAYS OVER 7, BETWEEN 8.15AM-6PM
(average per week)

Wage: £6.00 PER HOUR

Pension: NO DETAILS HELD

Work Pattern: DAYS, WEEKENDS

Duration: PERMANENT

Description:

Clean current driving licence
advantageous although not essential.
Main duties include washing and
valeting vehicles, communicating in a
clear and polite manner with customers
and promoting other company services.
Applicants must therefore be confident.
This company is expanding at great
pace and employer states there are real
opportunities for progression. Have to
be prepared to work weekends.
Company incentives may also be
available. If you do not hear within 2
weeks of applying assume you have
been unsuccessful.

How to Apply:

You can take the vacancy details to one
of the customer access phones provided
in the office and call Jobseeker Direct
on 0845 6060 234 and quote the
reference number. If you prefer, you
can contact Jobseeker Direct by taking
the details home with you. Lines are
open 8.00am - 6.00pm weekdays,
9.00am - 1.00pm Saturday. All calls
are charged at local rate. Call charges
may be different if you call from a
mobile phone. Alternatively, if you are
due to see a member of staff you may
wish to take the vacancy details to
them. For people with a speech or
hearing impairment, use textphone
0845 6055 255.

Additional Criteria:

If you are looking for work. Tax Credits

Client Copy

duplicate

Mr PETER THOMAS WILLIAM STILL
c/o 101 Falside Crescent
Bathgate
West Lothian.
EH48 2DS

Date: 16 November 2010

Issued by: Bathgate Jobcentre Plus Office
Number: BRX 17822
Type: Employment
Job: COLLECTION AND DELIVERY DRIVER
District: BROXBURN, WEST LOTHIAN
Wage: »14,700 PER ANNUM PLUS BONUS
Hours: 45 PER WEEK, MONDAY-FRIDAY, 8AM-6PM
Duration: TEMPORARY
Details: Previous experience is not necessary. Duties include driving in the Edinburgh area collecting and delivering parcels, ensuring the effective distribution of customer goods.

Pension: None
Contact: Alistair Bryce
0150 6853100 Ext: 0

What To Do Next: Please apply via the internet at:

Web site: www.interlinkexpressjobs.com

Additional Details:

Or apply via email to: depot669@interlinkexpress.com No calls will be accepted.

Wishing you success in your application. If you would like details of other jobs please ring Jobseeker Direct on 0845 6060 234. If you prefer to speak Welsh, the Jobseeker Direct Welsh Language Service is 0845 6067 890. The number for deaf or hearing impaired people who have access to a textphone is 0845 6055 255, or 0845 6044 022 for the Welsh Language textphone service. Calls to Jobseeker Direct are charged at local rate

EVIDENCE PROVIDED BY

TESCO - ET CLAIM

S/111150/2010

PETER STILL

v

TESCO STORES LTD

4 OTHERS

9/8/2010 - 22 July 2011

By Legal team - HAMMONDS

Andrei Pascardolo

Squor Patrick
Boyes

ON Days of 4 day hearing

14th June - 16th June 2011

① Photo copy of Hours of work of
hewisham v Malcolm
UR14-43,

② Peter Still Support your Attendance
print out
page total (3)

(Page 2) page 188 cont.

12th June 2011

16 17

16. 13/04/10	1	Back pain	50.76%	20.00%	Referred to D.O. 1 day sick 18/4 RTW 21/4 Sick again from 22/4 until 1/5 Refer to D.O.	Peter went absent again before disciplinary meeting could be held Absence % excluding back pain was still well above trigger of 3%, he had received 2 previous sets of next steps as per policy and 2 adjustment plans - 1) fixed shift pattern of Wed - Sun in Jan 09, and 2) Loading duties only from March 09
17. 22/04/10	5	Back pain	54.90%	16.90%	Dismissed 13/05/10	Dismiss

0202011

LONDON BOROUGH OF LEWISHAM (appellant) v. MALCOLM (respondent) and EQUALITY AND HUMAN RIGHTS COMMISSION (intervener)

[2008] UKHL 43

- 1800 Disability discrimination
- 1811.1 Disability-related discrimination – reason related to disability
- 1811.2 Disability-related discrimination – others to whom reason does not apply
- 1855 Discrimination by others than employers – providers of goods, facilities, services or premises

Disability Discrimination Act 1995: ss.22, 24

The facts:

Courtney Malcolm suffered from schizophrenia. His condition was controlled through medication. He rented a flat from the London Borough of Lewisham on a secure tenancy. He sublet his flat on an assured shorthold tenancy for a period of six months. That was a breach of the express terms of his tenancy agreement, which provided that subletting had the automatic effect that the tenancy was no longer a secure tenancy and could never subsequently become one. At the time that he had sublet the flat, Mr Malcolm had stopped taking his medication.

When the council discovered that Mr Malcolm had sublet the flat, it gave him notice to quit. At that time, the council was unaware that Mr Malcolm suffered from schizophrenia. When he did not vacate the flat, the council commenced possession proceedings in the county court. By that time, the council had been informed of his mental health problems.

In his defence to the possession proceedings, Mr Malcolm argued that the council's attempt to gain possession of the flat constituted unlawful disability discrimination contrary to s.22 of the Disability Discrimination Act 1995. He contended that he suffered from a disability for the purposes of the Act; that the reason why the council was seeking possession was because of his disability; and that unless the council could show justification the court was precluded from making a possession order against him. He claimed that he had only sublet the flat because he had not been taking his medication at the time, and this had led to his irresponsible behaviour. The judge in the county court rejected the complaint of disability discrimination and granted the possession order. The Court of Appeal reversed that decision. The council appealed to the House of Lords. The Equality and Human Rights Commission took part in the proceedings as intervener.

Two issues, amongst others, fell to be determined. Firstly, the correct comparators for the purposes of s.24(1) of the Act fell to be identified. There were three options: (a) secure tenants of the council without a mental disability who had sublet; (b) secure tenants of the council who had not sublet; and (c) some other unspecified comparator group. According to the Court of Appeal in *Clark v Novacold Ltd* the correct comparator was (b), but the council submitted that that case was wrongly decided and that the correct comparator was (a). On that basis, Mr Malcolm's discrimination claim would fail, since it was not disputed that the council would have issued a notice to quit and pursued possession proceedings against any secure tenant without a mental disability who had sublet his flat.

Secondly, it fell to be determined whether knowledge of the disability on the part of the discriminator at the time of the alleged discriminatory act was necessary in order to establish that the "reason" for the treatment related to the disability for the purposes of s.24(1). The council argued that it was necessary that the discriminator knew or ought to have known of the disability at the time of the alleged discriminatory act in order to satisfy s.24(1) and establish unlawful discrimination.

Although the issues related to disability discrimination in the field of housing, it was common ground that the same approach would apply to disability discrimination in the employment field.

Section 22 of the Act, so far as material, provides:

"(3) It is unlawful for a person managing any premises to discriminate against a disabled person occupying those premises (a) in the way he permits the disabled person to make use of benefits or facilities; (b) by refusing or deliberately omitting to permit the disabled person to make use of any benefits or facilities; or (c) by evicting the disabled person, or subjecting him to any other detriment."

Section 24 of the Act, so far as material, provides:

"(1) ... a person ('A') discriminates against a disabled person – (a) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply ..."

The House of Lords (Lord Bingham of Cornhill, Lord Scott of Foscote, Baroness Hale of Richmond (dissenting in part as to the reasoning), Lord Brown of Eaton-under-Heywood and Lord Neuberger of Abbotsbury) 25 June 2008 allowed the appeal and restored the decision of the judge in the county court.

The House of Lords held:

1811.1, 1811.2

The Court of Appeal had erred in holding that the council's conduct in seeking possession of the flat constituted unlawful disability discrimination.

(1) The correct comparator for the purposes of s.24(1)(a) is a secure tenant of the council with a mental disability who has sublet his property, a not a secure tenant who has not sublet his property. In that regard, the Court of Appeal decision *Clark v Novacold Ltd* was wrongly decided.

There is no point in asking whether a person has been treated "less favourably than others" if the reason why the disabled person was subjected to the allegedly less favourable treatment cannot apply to those "others". If a person has been dismissed because he is incapable of doing his job, there is no point in making the lawfulness of the dismissal depend on whether those who are capable of doing their job would have been dismissed if a person has been dismissed because he will be absent from work for a year, there is no point in making the lawfulness of his dismissal depend on whether those who will not be absent from work will be dismissed. If a tenant has been given notice terminating his tenancy because he has sublet in breach of the tenancy agreement, there is no point in making the lawfulness of the action taken by the landlord dependant on whether notice to quit would have been served on tenants who had not sublet. Parliament must surely have intended a meaningful comparison in order to distinguish between treatment that was discriminatory and a treatment that was not.

(2) In order for the alleged discriminator's "reason" to "relate to" the disability for the purposes of s.24(1)(a), it is necessary that the discriminator knows of, or ought to know of, the disability, at the time of the alleged discriminatory act. Unless the discriminator has knowledge or imputed knowledge of the disability, he cannot be guilty of unlawful discrimination under the Act.

That interpretation is supported by the fact that s.25(1) provides that a claim based on unlawful disability discrimination may be made the subject of civil proceedings in the same way as any other claim in tort, damages being recoverable. This points towards a requirement of knowledge. Moreover, the grounds of justification specified in s.24 of the Act assume that the discriminator has knowledge of the disability. It would be anomalous if a discriminator needs to know of the disability if