

Separating Doubt From Dismissal - Headmaster Narrowly Escapes Caning in Disability Harassment (UK)

Monday, June 24, 2019

All the best-practice recommendations about accommodating employees with disabilities stress the importance of dialogue with them about the limitations their disability may impose and the adjustments which might be made to help overcome them. Unimpeachable advice in principle, but not without risk in practice, as it turns out.

Last month's decision in **Ahmed - v- Cardinal Hume Academies** concerns an exceptionally unpromising start to an employment relationship, an allegation of disability discrimination arising in the course of a discussion about how to avoid disability discrimination.

Ahmed suffered from dyspraxia, causing him significant difficulties with reading, comprehension speed and writing without serious pain for more than a few minutes at a time. Nonetheless, he sought to qualify as a teacher and using technological aids made good progress with this up to the point where he was offered a placement with Cardinal Hume Academies. CHA's OH doctor provided a report confirming the dyspraxia to be a disability and touching upon some of its adverse impacts on Ahmed, but nonetheless certifying him fit to teach. The CHA Headmaster was perturbed by the idea of a teacher who could not write, and a meeting between him and Ahmed took place to help him resolve his concerns. Textbook stuff so far.

That meeting did not go well. Ahmed's later claim for disability discrimination alleged that the Headmaster had *"interrogated him in a very negative and unconstructive manner... and was dismissive of... his suggestions about how to overcome the writing issue"*. The Headmaster had been *"insensitive"* and *"hostile, demeaning and unwelcome"*. Since the conversation had clearly revolved around Ahmed's disability and had caused him distress, he said, it was, therefore, unlawful harassment.

The Headmaster did not suggest that he had been all sweetness and light either. He was taken aback to hear that Ahmed's dyspraxia would limit his handwriting to a few minutes only, he said, and not immediately sure how to move forward. As a 31-year teaching veteran, he was sceptical of Ahmed's claim that his disability would not be an issue. The Headmaster was by his own description *"a chalk and talk old school teacher and I am not convinced by technology because I don't know how to do it"*. As a result, he did not deny that he had pressed Ahmed hard on his explanations and had probably come across as doubtful that it would work out.

At a second meeting the following day Ahmed was sent home unpaid so CHA could work out how big a problem his disability would pose in practice and how it might best be accommodated. Ahmed took this "suspension" amiss also and resigned, alleging constructive dismissal and disability discrimination through the Headmaster's conduct in the two meetings.

On the facts he failed, in no small part because he had himself described the initial meeting to a third party as "civil, of course", and also because his own notes of the suspension meeting recorded that he had been told expressly that it was a neutral act designed to give CHA a breathing space in which to look at all the issues. Even if he did not like the potentially disciplinary connotations of the word "suspension", therefore, he had no objective



Article By
[David Whincup](#)
[Squire Patton Boggs \(US\) LLP](#)
[Employment Law Worldview](#)
[Public Education & Services](#)
[Labor & Employment](#)
[United Kingdom](#)

reason to believe it intended in that way.

But it was a close-run thing, and a useful reminder that whatever your doubts or reservations about whether or how a disability could be accommodated, there are ways and ways of expressing these. The difference between genuine scepticism based on real experience on the one hand and pre-determined rejection on the other is a very thin one. Both language and body language in those meetings will be important to the impression which the employee gets of your good faith in your attempts to reach a solution acceptable to both parties. Try to keep on the right side of the line between enquiring and cross-examining. This means treating what you are told as a valid answer unless there are clear holes in the thinking behind it. If there are things you don't understand (such as how IT might help compensate, as here), ask the employee to demonstrate them to you. If you think that he has missed something important, ask him about it in tones of enquiry, not challenge. Make notes so that you have some basis for later consideration or investigation - sitting there with arms folded across your chest does not indicate any degree of engagement with what you are being told. If you do not agree with a point the employee makes, explain why either then or later so that you are not seen as dismissive of it. As a minimum, don't react to what you see as bad points by blowing out your cheeks, snorting derisively or slumping back in your chair with a pained frown, rolling eyes or any other gesture construable as suggesting that the other one has bells on.

The EAT accepted that CHA was entitled to ask Ahmed to take a few days at home while it thought about what to do. It did not like CHA's descriptions of this period as "suspension" or "garden leave", but did not suggest any better term. The key thing will be to ensure that the employee is clearly told (ideally also in writing) that the request does not indicate any predetermination of anything, is not disciplinary-related and is for the express purpose of looking into how his disability may be catered for. Whilst he may still resent it, he may then struggle to show any material degree of offence to be reasonable in those circumstances.

© Copyright 2019 Squire Patton Boggs (US) LLP

Source URL: <https://www.natlawreview.com/article/separating-doubt-dismissal-headmaster-narrowly-escaping-disability-harassment>