



Reasonable Adjustments - How far must you go?

There have been a great number of cases on the question of what reasonable adjustments an employer must make for employees who are disabled. Often it is far from clear what precisely is expected from an employer and the extent to which an employer must making reasonable adjustments for disabled employees can be a very delicate issue. A recent decision in the Court of Appeal in England considered the scope of the duty to make reasonable

adjustments under the Disability Discrimination Act 1995.

Miss Difulco was employed by NTL Group Limited as a Service Improvement Manager from 4 March 2002 located in Hampshire. She was a graduate with 11 years experience of project management. After only ten days of employment she suffered an accident at work which caused substantial neurological injuries leading to partial paralysis. It was accepted by her employer that at all times thereafter she was a disabled person within the meaning of the Disability Discrimination Act 1995 (the "DDA"). She returned to work part-time in October 2002, working three days per week, partly from home and partly from NTL's Teesside office.

Before that, in July 2002, NTL had appointed another Service Improvement Manager, Mr Lewis. He was ten years younger than Miss Difulco and not a graduate. His was an internal appointment. In February 2003 Miss Difulco was signed off sick for two months, but during that period she continued to work from her parents' home in the north and that continued. On 6 October 2003 she was informed by Mr Melrose, the head of Internet Service Improvement that the number of Service Improvement Managers was to be reduced from two to one. Either she or Mr Lewis would be made redundant. Mr Melrose developed 13 selection criteria, scored the two candidates in the light of them and on 9 October 2003 informed Miss Difulco that Mr Lewis had scored higher. She was at risk of redundancy and a consultation period would ensue. She appealed against her selection for redundancy but was unsuccessful. Alternative roles were discussed with her and Miss Difulco stated that only part-time roles would be suitable for her continuing health needs. She was informed that there was a full-time post which matched some of her skills but that she would have to apply for it and go through a selection process and that, if successful, it might be possible for her to carry out the role on a part-time basis. Miss Difulco felt unable to apply for this role because it was not intended to be a part-time role and she did not wish to be pressurised into working full-time until she felt able to do so. She did not apply for the post and no other alternatives were discussed; her employment ended on 12 March 2004."

She issued proceedings in the Employment Tribunal for unfair dismissal and disability discrimination. The Tribunal held that she was discriminated against on the grounds of her disability and unfairly dismissed on the grounds of her disability. It stated that "it would have been a reasonable adjustment for the respondent to ascertain whether the role in the North

East could have been performed on a part-time basis and, if so, offer the post to the claimant without the need for a competitive selection procedure". The Employer appealed to the Employment Appeal Tribunal but the original decision was upheld. They appealed to the Court of Appeal.

The Court of Appeal over-turned the decision. The Court of Appeal, disagreeing with the EAT, held that this could not amount to a failure to make reasonable adjustments. Until Mrs Difolco had applied for the job, no duty to make reasonable adjustments arose. The Court said "If the mere fact of advertising for a full-time job can constitute an 'arrangement' for the purposes of the DDA then on the face of it it would potentially discriminate against the whole innominate class of possible disabled applicants for the job".

The employee failed in her claim because she did not apply for the post therefore she was not discriminated against. Employers with concerns in this complex issue should always seek legal advice.

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