

Foster v Leeds Teaching Hospital NHS Trust EAT 2011

A man disabled by stress from working in a particular department should have been placed on the redeployment register as a reasonable adjustment. There need only have been the prospect of him being redeployed – it was not necessary that this prospect was “good” to make the adjustment reasonable.

Mr Foster, was employed by the Leeds NHS Trust as a Senior Security Inspector. In 2006 his relationship with his line manager broke down, and from October 2006 he was unable to work as a result of stress. He never returned to work, and on 6 February 2009 he was dismissed on the ground that the Occupational Health doctor could not predict the likelihood of his situation altering within the foreseeable future. Mr Foster's complaints of disability discrimination and unfair dismissal were upheld by an ET and subsequently by the EAT.

Shortly after Mr Foster went on sick leave in October 2006, he raised a grievance alleging, amongst some other things, that he had been bullied and harassed by his line manager. It took some time for the grievance to be determined, and in the meantime, Mr Foster was seen by a doctor in Occupational Health who advised that attempts should be made to resolve the issues as soon as possible, as Mr Foster's ability to return to work would become less likely as time went on.

However the Trust' insisted that his ill-health and his grievance were separate issues. That remained the stance of the Trust throughout their dealings in this case

The EAT commented that “although management thought that the dismissal of Mr Foster's grievance should be regarded as having resolved the issues of bullying and harassment which Mr Foster had raised, that was not how Mr Foster saw it. For Mr Foster, rightly or wrongly, the problem still existed. So long as Mr Foster thought it still existed, his return to work would not be possible until he was redeployed, in effect, to a role outside the Security Department”.

The Tribunal found that no reasonable employer would have rigidly separated consideration of Mr Foster's absence from work from the reasons for that absence. And no reasonable employer would have dismissed Mr Foster before fully considering the reasons for his absence from work, and whether, when it was in possession of the full facts, there was any alternative to dismissal.

Although ultimately Mr Foster was too ill to return to work, the Tribunal found that there was a good chance that it would not have got to that stage in February 2009 if he had been placed on the redeployment register in January 2008. It was the Trust's failure to do that which had set in train the events which resulted in his dismissal in February 2009.

The Trust were found to have discriminated against Mr Foster for failing to make a reasonable adjustment.