Employee’s dismissal whilst entitled to long-term disability benefits found to breach implied contractual term

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The EAT held that an employer was not entitled to dismiss an employee on grounds of ‘capability’ given that the employee was contractually entitled to long-term disability benefits (namely, a Permanent Health Insurance Scheme (“PHI”)) and would, therefore, be deprived of the benefits to which they would otherwise be entitled pursuant to the Scheme.

The Claimant, Mr Awan, was employed as a security agent for American Airlines. His employment contract generously provided that he was entitled to full sick pay for six months and if his sickness absence exceeded this period, he benefited from a long-term disability benefit plan, which would pay two-thirds of his annual base salary until either he returned to work, retired or died. The contract also contained a clause entitling his employer to dismiss on notice.

Mr Awan was subsequently signed off sick with depression. During this time, his employment was transferred to ICTS due to outsourcing of his department. However, the new employers used a different insurance company for long-term disability benefits and the new insurer refused to cover employees who had pre-existing sickness absence when the new policy commenced. The original insurer only agreed to cover the Claimant for a specified amount of time following the TUPE transfer as a gesture of goodwill.

Mr Awan's employment was subsequently terminated by ICTS as he had been on sickness absence for over two years and they believed that there was no prospect of him returning to work.

Mr Awan brought employment tribunal proceedings claiming that his dismissal while he was entitled to long-term disability benefits was unfair and amounted to discrimination arising from disability.

The EAT held that ICTS should not have dismissed Mr Awan for incapability while he was in receipt of long-term disability benefits. Mr Awan had a contractual entitlement to be paid two-thirds of his salary after six months of sick leave. The EAT highlighted that his contract did not refer to an insurance policy or state that his entitlement to disability benefits was dependent on the rules of an insurance policy or the rules of a particular insurance provider. There was also no evidence to show that the original insurance policy was ever provided to employees. It was, therefore, concluded that

ICTS’s obligation to pay benefits under the disability plan was regardless of whether the insurer paid out under the policy or not.

It was further determined that the whole purpose of PHI and/or other disability benefit schemes would be defeated if an employer could simply end entitlement under the schemes by dismissing employees when they become unfit for work. However, whether or not an employer had a contractual right to do so would be decided on a case by case basis. The express clause to enable termination in Mr Awan’s contract was drafted in general terms and it did not expressly deal with incapacity or reserve the right to dismiss without cause. Mr Awan also had the benefit of an express clause entitling him to disability benefits (as outlined above). This clause did not allow for dismissal upon incapacity.

There had been a fundamental contradiction between an employer’s right to terminate a contract on notice and the employee’s contractual right to disability benefits. A term was, therefore, implied into the contract of employment that the employer could not terminate due to incapacity reasons whilst the employee was entitled to payment of disability income due under the long-term disability plan.

Awan v ICTS UK Ltd UKEAT/0087/18

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