

Employer failed to make reasonable adjustments to redeploy disabled employee being made redundant

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Employer failed to make reasonable adjustments to redeploy disabled employee being made redundant

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The Employment Appeal Tribunal has held that an employer failed to make reasonable adjustments to redeploy one of its disabled employees who was at risk of redundancy and could not attend interviews. The EAT held that the employer should have made reasonable adjustments and offered an alternative way of assessing the employee's suitability for redeployment roles, even though the employee had been unresponsive when HR suggested alternative roles.

Mr Charles worked at the London Borough of Southwark as an environmental enforcement officer. In March 2011, Southwark informed Mr Charles that he was being made redundant. The Council had certain posts which it had ring-fenced for redeployment opportunities. On 10 May 2011, the Council informed Mr Charles that his employment was due to terminate on 3 August 2011. Three days later, Mr Charles' GP signed him off work for a period of three months because Mr Charles suffered from "sleep paralysis agitans" which meant that he woke up at night paralysed and he also suffered from depression.

Employees in Mr Charles' pool were invited to interview for a Noise Support Officer post. Mr Charles did not express an interest in an interview. The Council referred Mr Charles to its occupational health provider, Atos. On 25 May 2011, Atos advised that no adjustments were required. Later, on 17 June 2011, Atos advised that Mr Charles could not attend administrative meetings.

On 4 August 2011, the Council informed Mr Charles that his termination date had been pushed back to 26 August 2011. HR at the Council then made several attempts to contact Mr Charles in relation to the Noise Support Officer role. Although Mr Charles did ask some questions in relation to the role, he did

not reply to repeated requests from HR to confirm whether or not he would be interested in it and, if so, when he would be fit to attend an interview. HR also emailed Mr Charles other role details and called him but did not receive a response. On 25 August 2011, the Council sent a letter to Mr Charles confirming his employment would terminate the following day in the absence of an expression of interest in an alternative role.

Mr Charles brought a claim for discrimination on the grounds of disability, namely the failure of Southwark to make reasonable adjustments when considering redeployment opportunities.

The EAT held that the Council's practice of requiring those at risk of redundancy in the redeployment pool to attend interviews was a practice which put Mr Charles at a considerable disadvantage as a result of his disability (which prevented him from attending interviews for alternative roles). The EAT held that Mr Charles should not have been subjected to a formal interview process and that the Council should have assessed his suitability for redeployment through alternative means.

London Borough of Southwark v Charles UKEAT/0008/14

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