Expectation that disabled employee would work late could be discriminatory

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An employer’s expectation that employees would work late had the potential to be discriminatory on grounds of disability.

Mr Carreras was employed as an analyst at United First

Partnership Research from October 2011. He typically worked long hours, averaging 9am to 9pm. In July 2012 Mr Carreras had a serious bike accident which required several weeks off work. When he returned, he continued to suffer with dizziness, fatigue and head aches and found it difficult to work in the evening. He worked a maximum of 8 hours a day in the first 6 months after returning and thereafter worked from 8am to 7pm. From October 2013, United began requesting, and then assuming, that Mr Carreras would work late nights. Mr Carreras felt that he may be made redundant or be denied his bonus if he refused.

In February 2014, Mr Carreras objected to working late as he was feeling tired. One of United's owners loudly reprimanded Mr Carreras in front of his colleagues and indicated that he could leave if he did not like it. Mr Carreras resigned that day and, a few days later, wrote a detailed email with his reasons for doing so. He brought claims for constructive dismissal and disability discrimination, alleging that United had failed to make reasonable adjustments.

The Employment Appeal Tribunal found that the expectation that Mr Carreras would work late was in fact a requirement (as opposed to a request) which could place him, as a disabled person, at a substantial disadvantage. The EAT stressed the need to look at the reality of the situation; though United did not, strictly speaking, compel Mr Carreras to work late, in practice, Mr Carreras had been made to feel that he was obliged to do so.

It is hard to see where the line will be between a hard-and-fast requirement or practice (which could found a discrimination case) and a mere request.

Carreras v United First Partnership Research UKEAT/0266/15

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