IN THE COUNTY COURT AT LEEDS

Case No. K01LS028

Leeds Combined Court Centre
Oxford Row
LEEDS LS1 3BG
Date: 17 September 2024

Before District Judge Royle
sitting with
Martyn Weller as an assessor

Between:

MR DOUG PAULLEY **Claimant**

– and –

NETWORK RAIL INFRASTRUCTURE LIMITED **Defendant**

The Claimant appeared in person

Miss Lawley of Counsel (instructed by **DAC Beachcroft LLP**) for the **Defendant**

Hearing date: 17 September 2024

Approved Judgment

I direct that pursuant to CPR r.39.9(1) no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

District Judge Royle:

Summary

1. This is my judgment in case number K01LS028, a claim brought under the Equality Act 2010 ("**the Act**") by Doug Paulley against Network Rail Infrastructure Limited. It relates to events which happened on 6 March 2023 when Mr Paulley travelled on the Caledonian Sleeper service from London Euston station. He was travelling to Fort William, with a scheduled departure time of 8.15pm.

2. Where I refer simply to a section number of an Act in this judgment, those references are to the Act unless I say otherwise.

3. I heard the case with Mr Martyn Weller, an assessor appointed earlier in the proceedings without objection, pursuant to s.63(1) County Courts Act 1984 and s.114(7). What follows is a result of discussions between us. For the vast majority of the material, we were entirely agreed. Where that is not so, I will explain what we disagreed about.

The issues

1. It is common ground that Mr Paulley is disabled within the meaning of s.6. He is a wheelchair user following stroke and autonomic failure. He says, and I have had no reason to doubt, that he is also autistic.

2. Mr Paulley booked assistance earlier that afternoon in terms that he would be met at the First Class Lounge at 7.45pm (where there was an arrangement for him to use an accessible shower, there being none on the train itself) and escorted to the platform. He was to have help with his luggage, the use of the ramp to board the train, and to find his seat.

3. It is common ground that the assistance never arrived. Mr Paulley's case is that he saw another disabled passenger receive assistance in the First Class lounge, but that no assistance ever arrived for him. That, he says, is despite the train operator (Caledonian Sleeper) confirming his booking for the First Class lounge meeting time by email, and telephone calls being made to the Defendant's travel assistance staff whilst he was in that lounge.

4. The claim as originally framed was brought on two grounds:

    a. The requirement for those passengers who have booked assistance to report to the Assisted Travel Lounge was itself indirectly discriminatory under s.19.

    b. The failure to provide the assistance was a failure to make a reasonable adjustment as set out below.

5. Mr Paulley seeks three things:

    a. First, a declaration that discrimination has occurred.

    b. Second, damages for injury to feelings.

    c. Third, an injunction requiring the Defendant to put its systems right so as to avoid these problems happening in the future.

6. It is common ground that the Defendant is a service provider within the meaning of s.29 Equality Act 2010 and thus owes duties not to discriminate, including the duties to which I will shortly refer.

7. The Defendant's defence was originally that those who have booked travel assistance were required to visit the Assisted Travel Lounge on the Euston concourse. Additionally or alternatively, Mr Paulley was required to prove both that he had booked the assistance he claimed. It was further pleaded that there was no failure to make the reasonable adjustments Mr Paulley claimed to have booked because the Defendant was unaware that he had arrived on the station and indeed had been recorded in its assistance system as a "no show".

8. By concession in the defence, the Defendant accepted that if Mr Paulley proved that he had booked assistance and that its staff were made aware of his arrival in the First

Class lounge so as to receive that assistance, then the failure to provide it would be a breach of the duty to make reasonable adjustments under sections 20 and 21.

Burden and standard of proof

9. I remind myself that the Claimant brings this claim, and it is for the Claimant to satisfy me to the civil standard – that is "what is more likely than not" or "on the balance of probabilities" that the facts are as he says they are. That is subject to s.136, which modifies the burden of proof in discrimination cases. The material parts of that section are as follows:

> *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

Evidence

10. We heard from two witnesses: Mr Paulley himself on his own case, and Mr Abdelouahab Aitguermit, who was at the relevant time a Passenger Assistance Manager with the Defendant.

Representation

11. Mr Paulley represented himself; the Defendant was represented by Miss Lawley of Counsel. We are grateful to them both for this help and the courteous manner in which they conducted the case.

Indirect discrimination

12. During Mr Aitguermit's evidence, it became clear that there is in fact no policy that those who have booked assistance must report to the Assisted Travel Lounge ("**ATL**") on the concourse at Euston. That was not only what he told us, but it also made perfect sense: many assistance requests will require a meeting point other than at that lounge – for example on disembarkation from a train, at the taxi drop off, or upon entry to the concourse itself. It is not clear how paragraph 5 of the defence, which appears to suggest the opposite, could ever sensibly be the case.

13. It follows from that conclusion that there is no policy, criterion or practice which requires those who have booked assistance to attend the ATL, and so there can be no indirect discrimination arising under s.19 in that regard.

Reasonable adjustments

14. Sensibly, given the documentary evidence produced by Mr Paulley (some of which arose from a Subject Access Request under the data protection legislation), it quickly became common ground that:

    a. Mr Paulley *had* booked assistance as described above. There had been some difficulties with the Passenger Assist mobile phone app, but he had persevered and Caledonian Sleeper had booked assistance for him as described above. Although that booking did not appear in the Defendant's statistics, I accept the explanation of Mr Aitguermit as to why that was: the statistics are produced daily and in the morning, so that Mr Paulley's afternoon booking was not included.

b. Telephone calls were made from the First Class lounge to the assistance staff at Euston. Miss Lawley accepted that the Defendant was not in a position to gainsay that evidence.

15. Miss Lawley therefore accepted that the failure to provide the assistance which Mr Paulley had booked through Caledonian Sleeper was a breach of the duty to make reasonable adjustments.

Remedy

16. Section 119 applies if there is a contravention of a provision referred to in section 114(1). Here, that is a breach of the duty to make reasonable adjustments. The Court can grant any relief which could be granted by the High Court in proceedings. That undoubtedly encompasses the heads of relief Mr Paulley seeks.

17. However, s.119(5) prevents this Court from making an award of damages unless it has first considered whether to make any other disposal. I do not consider there is any suitable alternative disposal of this claim.

18. Injury to feelings must be proved: it is not sufficient to prove a discriminatory act and thereafter to draw some kind of inference. However, "no Tribunal will take much persuasion that the anger, distress and affront caused by the act of discrimination has injured the Claimant's feelings": *Ministry of Defence v Cannock* [1994] IRLR 509, EAT.

19. In terms of the impact on Mr Paulley, Mr Weller and I reached the following conclusions:

    a. There would inevitably have been a period of anxiousness from 7.45pm when the assistance was booked to arrive until the time, about 10 minutes or so before the scheduled departure when Mr Paulley set off on his own.

    b. It was accepted in evidence that his luggage attached to the rear of his wheelchair, and so there was no real difficulty caused by the lack of assistance with luggage between the First Class lounge and the departure platform.

    c. We accept that the journey from the First Class lounge to the platform was plainly important to Mr Paulley; there would be little reason to book assistance *from that lounge* if it was not.

    d. We accept that the process of navigating a busy station in a wheelchair without assistance will inevitably be more stressful than if assistance had been provided because it will be more challenging to navigate around other passengers, who may well be hurrying to wherever they are going. Self-evidently, a wheelchair user's perspective of the surroundings may be different to that of someone who does not use a wheelchair.

    e. We accept Mr Paulley's evidence that his autism means that organisations not following rules, or where there are changes, can cause anxiety. We accept that if the assistance had been provided, then any changes (such as the delayed departure which in fact occurred in this case) may have been easier for Mr Paulley to deal with.

    f. Mr Paulley explained that he considered Euston station had a particular problem in these sorts of regards. He says others he knows have had similar experiences, and there is even a social media 'tag' '#EustonWeHaveAProblem". However, in our view this case is about what

happened to Mr Paulley on the day in question. There was insufficient evidence for us to reach any conclusion that this was some sort of sustained problem.

g. Mr Paulley's experience has, he says, dented his confidence in using the service from Euston again. It seemed likely to us that the more incidences there were of this kind of problem, the less likely someone might be to use the service. It was not, however, Mr Paulley's evidence that he felt that he simply could no longer use Euston station. Thus it was our conclusion that whilst there is an effect on his future confidence in rail travel from Euston, that impact was more minor than the stress of solo navigation through the station on the 6 March 2023.

h. Mr Paulley did not miss his train. On arrival at the platform he had assistance to board up a ramp (which is in fact operated by the train operator at Euston rather than the Defendant), and was shown (or found) his seat or cabin.

i. The social media video Mr Paulley has published, which Mr Weller and I viewed, appears to show that by the time Mr Paulley did get to the platform, whilst he was plainly aggrieved, he spoke to the train staff in a courteous manner and did not appear to be unduly upset or anxious.

20. Mr Weller and I agree that the Defendant's breach has undoubtedly caused stress, anxiety and loss of confidence to Mr Paulley both in the run up to his solo departure from the First Class lounge, and during what appears to have been a relatively brief journey to the platform. We also agree that there will have been some, probably relatively small, degree of ongoing effect on Mr Paulley's willingness to use Euston again. We do not think it likely that it will stop him altogether.

Injunction

21. I do not consider there is sufficient evidence to grant the injunctive relief Mr Paulley seeks. I consider the suggested aim of the relief to be in too general terms, and both Mr Weller and I are unconvinced that the particular evidence in this case makes out a systemic failing on the part of the Defendant. What happened on 6 March 2023 seems far more likely to have been a one-off particular communications failure which sadly led to Mr Paulley's situation that day.

Declaratory relief

22. In light of the Defendant's concessions, there will be a declaration that the Defendant discriminated against the Claimant by failing to make reasonable adjustments on 6 March 2023 in that it failed to escort Mr Paulley from the First Class lounge to the departure platform of the Caledonian Sleeper.

Damages for injury to feelings

23. We have found that Mr Paulley has suffered damage as a result of the Defendant's breach, as described above. It is the quantification of those damages that Mr Weller and I disagree upon. Mr Weller's view is that the award should be lower than that which I am about to describe. I shall explain further below.

24. An award of damages for injury to feelings requires a broad brush exercise of estimation than a calculation or comparison with precedents or simple cold logic: see *R (Elias) v Secretary of State for Defence* [2006] IRLR 934, CA. As was said in *Vento v Chief Constable of West Yorkshire Police (No. 2)* [2003] IRLR 102, CA, subjective

feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, stress, depression etc. and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise. The Court must do the best it can.

25. The relevant principles were set out in *Armitage & another v Johnson* [1997] IRLR 162, EAT. Such awards are compensatory and should be just for both parties rather than punitive on the tortfeasor. Awards should not be too law as that would diminish respect for the policy of anti-discrimination legislation. Awards should, though, be restrained as excessive awards could be seen as a route to untaxed riches. There should be some broad general similarity to personal injury cases, by reference to the range rather than any particular *type* of award. We must bear in mind the value in every day life of the sum awarded, for example by reference to purchasing power, and the need for public respect for the level of awards made.

26. Awards for injury to feelings are broadly categorised into three 'bands', originally (and still) referred to as 'Vento' bands after *Vento* itself.

27. The original monetary amounts given in *Vento* were updated in the case of *Da'bell v NSPCC* [2010] IRLR 19, EAT. Since then, the Presidents of the English & Welsh, and Scottish, Employment Tribunals have specified new figures with effect from 2017. Further revised figures have been promulgated with effect from 6 April 2024. However, that guidance was said to apply only to claims presented *after that date*. In personal injury claims, the most recent Judicial College guidelines are used irrespective of the date of the incident in question. Counsel was (forgivably) unable to explain which approach I should adopt. I consider that in the County Court, I should use the most recent figures is appropriate, not least because it seems likely to remove any question of an interest calculation but also for parity of approach with personal injury claims. Accordingly, the applicable lower bracket is that found in the 7th Amendment to the Presidential Guidance of 2017 following *De Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ 879, which is £1,200 to £11,700.

28. The lower band is for less serious cases where the events are isolated or are "once off". The highest bracket is for the most serious cases, for example a lengthy campaign of discriminatory behaviour. The middle band is for those cases above the bottom bracket and below the highest. However, there are no rigid rules: see *Kemeh v Ministry of Defence* [2014] IRLR 377, CA.

29. Mr Weller and I agree that this case is to be treated as a once-off incident, and our assessment is that it is towards the bottom end of the bottom bracket given our findings above.

30. It was upon the level (rather than the band) of the award that Mr Weller and I disagreed. Mr Weller considered that a lower figure, below the bottom of the bracket, was merited. However, I remind myself that awards below the lower end of the bottom bracket risk being perceived as nugatory, or not being a proper recognition of injury: see *Vento*.

31. I consider that the appropriate and reasonable damages for the injury to feelings caused are at or about that lower figure in this instance, to be uplifted only modestly to reflect the relatively small ongoing impact that I described above. The final figure I award is therefore £1,325.