



# EMPLOYMENT TRIBUNALS NOTICE OF APPEARANCE BY RESPONDENT

In the application of Mr B Nesbitt  
(please quote in all correspondence)

Case Number 2501738/2003

- \* This form has to be photocopied, if possible please use Black Ink and Capital letters
- \* If there is not enough space for your answer, please continue on a separate sheet and attach it to this form

1 Full name and address of the Respondent:

DUNLOP TYRES LIMITED  
WEAR INDUSTRIAL ESTATE  
WASHINGTON  
TYNE & WEAR

Post Code: NE37 1LJ

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Telephone number: 0191 416 2515

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2 If you require documents and notices to be sent to a  
representative or any other address in the United  
Kingdom please give details:

WRAGGE & CO  
55 COLMORE ROW  
BIRMINGHAM  
B3 2AS

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Reference: 1846337/MEC/JUA

Telephone number: 0121 233 1000

for office  
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Form IT3 E&W - 1/95

## 7 give particulars of the grounds on which you intend to resist the application.

- 7.1 Save as follows the allegations in the Originating Application are denied.
- 7.2 While it is admitted that Mr Nesbitt (the "**Applicant**") had an accident in October 2001 in which he incurred a head injury is denied that his current condition constitutes a disability within the meaning of the Disability Discrimination Act (the "**Act**"). In the circumstances the Respondent submits that this case should be listed for a preliminary hearing on the issue of jurisdiction in relation to this point.
- 7.3 Immediately prior to the Applicant incurring his head injury in October 2001 he was working at Dunlop Tyres Limited (the "**Respondent**" or the "**Company**") as a shift production worker. This involved manual work on the shop floor and working shifts.
- 7.4 After recovering from his head injury the Applicant was advised by his doctors that he would not be able to return to manual work or working shifts due to the nature of his condition. The Applicant was retrained by Rehab UK in administration and computer inputting work. Rehab UK, as part of the Applicant's reintroduction to the workplace and to practise his newly acquired skills, asked the Company if they could place the Applicant in a suitable administrative job between 4th March 2002 and 30 September 2002.
- The Company did not have a suitable vacancy but in order to help the Applicant to develop his new skills the Company created a short term post for him. The position involved inputting production figures from the shop floor into a computer. This input work then automatically produced information on production levels for supervisors and other management to look at. Ordinarily the supervisor on each shift would have input these figures as part of their everyday duties. However, the supervisors on each shift were told not to do this work while the Applicant was on his work placement. Instead the supervisors were asked to give the figures to the Applicant to input.
- 7.6 Rehab UK assessed the temporary position that the Company had created for the Applicant. They found that the position was suitable and they confirmed that they were happy that it was within the range of the Applicant's abilities and posed no danger to his health and safety.
- 7.7 The Applicant started in the administrative position and did this work until 7th June 2002 when he commenced sick leave from the Company with a pain in his right ankle. The Applicant returned to work on 27th June 2002.
- 7.8 When the Applicant returned to work after sick leave he said he was experiencing difficulties keeping up with the work he was asked to do. Rehab UK contacted the Company with a view to looking at the difficulties that the Applicant was facing in the workplace. The Company welcomed this proposal and after taking advice from them made some changes to the Applicant's work routine including taking some work off the Applicant.
- 7.9 The changes to the work routine were approved by the Company doctor before the Applicant started. The Company also appointed their Training and Development Coordinator to manage the Applicant on a daily basis to ensure he was able to handle the work he was given and that his health was not in any danger. On an on-going basis the Applicant was also asked to complete work sheets on a daily basis so that his exact work level could be monitored and recorded.
- 7.10 On 19th September 2002 the Applicant was signed off sick again with "post concussion". The Applicant claimed that pressure at work had exacerbated his condition and was leading to him having more frequent seizure activity. The Applicant was off work for over four months and contacted the Company on 28th January 2003 to inform the Company that he had been authorised by his GP to return to work on 3rd February 2003.



- 7.11 The Company decided that due to the history of the Applicant's condition and the fact that he had been signed off from work sick for over four months they needed to be sure that whatever position the Applicant returned to was a safe job for him. The Company was aware that the administrative job that the Applicant had been doing before his sick leave had exacerbated his medical condition and did not want to put the Applicant in a position where this might reoccur.
- 7.12 In view of the Company's concerns the Company commissioned the Company doctor to see the Applicant and produce a report on his ability to return to work and also to give an opinion on what work the Applicant would be able to do.
- 7.13 The Company doctor produced the report on 16th April 2003. The report was delayed because the Company doctor was waiting for information from the Applicant's GP. The report states that the Applicant would be able to cope with administrative duties. However the Company doctor emphasises that the Applicant should not be exposed to any fluctuations in workload whatsoever as such fluctuations, however small, could lead to the Applicant having a reoccurrence of his previous symptoms of agitation and stress in response to changes in his level of workload. The doctor also stated that unless a job with absolutely no changes in his level of workload could be found he could not guarantee the Applicant's safety at work.
- 14 In view of the Company doctor's comments the Company is now looking for a suitable position in the Company for the Applicant. The administrative job that the Applicant was doing in September 2002 was only a temporary position created to help him develop his newly acquired administrative skills. The Company was not able to make this into a permanent position because the inputting of the production figures was the job of the shift supervisors. Also, if it had been possible to make the job permanent it would not have been suitable because it involved fluctuations in the workload because the level of production constantly changes.
- 7.15 Since the Applicant incurred his injuries in October 2001 the Company feels that it has done everything it possibly can to help him to return to the workplace in a job that he could do without exacerbating his medical condition. The Company has also tried to help the Applicant as much as possible in providing full salary long after the Applicant's entitlement to this was over and providing enhanced sickness benefits when the Applicant should have only been receiving SSP.
- 7.16 It is denied that that Applicant was suspended on medical grounds without being informed of this. The Applicant was informed that it would be unsafe for him to return to work until a suitable position could be found. The Company have explained to the Applicant what is happening and that, in view of the medical evidence, cannot allow the Applicant to return to work unless and until a suitable vacancy can be found.
- 7.17 It is denied that the Applicant was required to do a large and unmanageable amount of work during his role as an administrator. The workload given to the Applicant was monitored to ensure that it was manageable and achievable for him.
- 7.18 The Respondent denies disability discrimination against the Applicant.
- 7.19 It is denied that the Applicant suffered less favourable treatment as alleged or at all. In the alternative if the Tribunal should find that there was any less favourable treatment then it was justified.
- 7.20 It is denied that the Respondent has failed to make any reasonable adjustment. The Respondent has acted at all times on the advice of the Company doctor and sought the advice of specialist bodies to ensure that appropriate and reasonable adjustments have been made. If the Tribunal should find that the Respondent was under any duty to make a reasonable adjustment and failed to do so then the Respondent will submit that this was justified in all the circumstances.

- 7.21 It is denied that the Applicant carried out any protected act which would allow him to make a claim for victimisation. In the alternative if the Tribunal should find that the Applicant did carry out a protected act, which is denied the Respondent denies that it treated him less favourable as a result.
- 7.22 The Respondent intends to make a request for further and better particulars and reserves the right to amend the Notice of Appearance on receipt of responses from the Applicant.

8 Please sign and date the form.

Signed *Wragge + Co*  
for and on behalf of the Respondent

Dated *27<sup>th</sup> May 2003*

DATA PROTECTION ACT 1984

We may put some of the information you give on this form on to a computer. This helps us to monitor progress and produce statistics. We may also give information to:

- \* the other party in the case
- \* other parts of the Employment Department Group and organisations such as ACAS (Advisory Conciliation and Arbitration Service), the Equal Opportunities Commission or the Commission for Racial Equality.