EMPLOYMENT TRIBUNALS

Claimant: **Kelly Grace**

Respondent: **Maldon Lodge Care Home**

Heard at: **East London Hearing Centre**

On: **6 and 7 February 2019 and in chambers on 8 February 2019**

Before: **Employment Judge Allen**
Miss S Campbell
Mrs S Jeary

Representation

Claimant: in person, assisted by her mother, Ms Carter
Respondent: in person, presented by Ms Potter and Ms Aitken

JUDGMENT

The judgment of the Tribunal is that:-

1. **The Claimant's claim for unlawful deduction from wages succeeds (on admission by the Respondent).**

2. **The Claimant's first two claims for failure to make reasonable adjustments (time to complete e-learning; and failure to permit return to work pending completion of e-learning) succeed.**

3. **The Claimant's third claim for failure to make reasonable adjustments (failure to permit return to work pending review of policies and procedures) fails and is dismissed.**

4. **This matter will be listed for a 1 day Remedy Hearing on the first available date after 22 May 2019. Orders giving directions for that hearing are set out at the end of the Reasons below.**

Reasons

1. The Claimant brought claims for: unlawful deduction from wages and disability discrimination (failure to make reasonable adjustments) in an ET1 claim form presented on 27 April 2018.

2. At the commencement of the hearing, the Respondent conceded that the Claimant was disabled within the meaning of the Equality Act 2010 at all relevant times because of her dyslexia. The Respondent also conceded the unlawful deduction from wages claim.

3. At a Preliminary Hearing (Case Management) on 23 July 2018, the reasonable adjustment claims were clarified and identified. Following discussion with the parties, we further clarified and identified those claims as follows:

3.1 Whether the respondent operated a Provision, Criterion or Practice (PCP) of requiring employees to complete an annual review of all e-learning modules within a particular period. The deadline depended upon the date on which the employee had started employment and therefore when the 12 month review period came around. The Respondent accepted that it operated such a PCP. The Respondent also accepted that a person with dyslexia such as the Claimant would be sustainably disadvantaged by such a PCP and that the Claimant was so disadvantaged. The question for the tribunal was whether, in the circumstances of this case, giving the Claimant more than a 2 week extension would have been reasonable.

3.2 Whether the respondent operated a PCP of refusing to allow employees who had not completed their e-learning to return to work until the modules were completed. The Respondent accepted that it operated this PCP. The questions for the tribunal were whether the operation of that PCP put disabled people with dyslexia such as the Claimant at a substantial comparative disadvantage, whether the Claimant was put at such a disadvantage and whether it would have been reasonable to have permitted the Claimant to return pending the completion of the e-learning – taking into account the circumstances including (1) the Respondent's assertion that its rule was implementation of guidance from the CQC; (2) the length of time that the Claimant did take to complete the e-learning; (3) the Claimant's assertion that if she had been able to return to the workplace, this would have enabled her to seek assistance with the completion of the e-learning;

3.3 Whether the Respondent operated a PCP of refusing to allow employees who had not undertaking a review of policies and procedures (either in their entirety or just new policies and procedures) to continue to work until that had been completed. Whether that placed disabled people at a substantial disadvantage and whether it placed the Claimant at such a disadvantage. Whether it would have been reasonable to permit a return to work pending any such review.

4. The Respondent has accepted that it did not have the contractual right to stop paying the Claimant in the period until her return to work on 24 October 2018. It does have such a provision in its new contracts of employment – which the Claimant has not signed – but it accepted that it could not demonstrate that such a provision applied in the contractual terms and conditions that applied to the Claimant. Therefore, the unlawful deduction from wages claim was conceded by the Respondent.

5. The Tribunal had 2 bundles of documents – one from the Claimant running to 179 pages, to which, without opposition, on the 2nd day of the hearing, the Claimant added two additional documents. The Respondent's bundle, comprised two parts, the first running to 69 pages; the 2nd comprising 19 numbered documents of varying length. There was considerable overlap between the bundles.

6. We heard evidence from the Claimant; and from Mrs Lisa Aitkin, a director of the Respondent Company; and Mrs Samantha Potter, Management Support at the Respondent. The parties addressed us orally after the conclusion of evidence.

7. The Claimant was asked about adjustments to the tribunal process which might arise from her dyslexia. She asked for the patience of those asking her questions as on occasion she could struggle for the correct word. This was agreed and put into practice.

8. The Claimant was effectively represented by her mother who informed us on the first day of the hearing that the Respondent's bundle contained a number of documents that the Claimant had not previously seen. The Tribunal allowed the Claimant a period of over an hour to review those new documents, which she agreed was acceptable, and the Tribunal permitted the Claimant's mother to ask additional questions in examination in chief of the Claimant – an opportunity which she took up.

9. At the conclusion of the first day of the hearing, the Tribunal gave the Respondent the opportunity to provide us with any further documentation relating to (a) the CQC's requirements for workers to complete e-learning annually and prior to any continuation of working; (b) any contractual documentation demonstrating the Respondent's right to stop paying the Claimant having removed her from the rota upon her having failed to complete her e-learning within the Respondent's time period. On the 2nd day, the Respondent failed to produce any such documentation but told the Tribunal that having contacted the CQC inspector after the 1st day of the hearing had finished, they were advised that the CQC guidance did not require the strict annual e-learning review, which the Respondent had adopted.

Findings of Fact

10. The Claimant's employment with the Respondent started on 6 October 2016.

11. She initially worked for 9 hours per week. This increased in January 2017 to 18 hours per week and, at the Claimant's request, was reduced back down to 9 hours per week from January 2018.

12. Between 30 November 2016 and 13 December 2016 the Claimant successfully passed her induction training, including e-learning modules. She did very well and

obtained an average of 98% in the modules. This was a period shorter than the 1 month standard period allowed by the Respondents.

13. The Claimant described the e-learning modules as being 'speak to text' involving an element that could be listened to and then a series of up to 20 multiple choice questions which had to be read. She told the tribunal that she needed assistance in dealing with the multiple choice questions. In 2016 she had assistance from her mother, her husband and from Ms Hugh, her 'senior' in the workplace. Ms Potter from the Respondent told the tribunal that she was unaware that this assistance had been given.

14. In January 2017, the Claimant started an NVQ qualification which when she obtains it, will permit her to move to a more senior position.

15. The Claimant's training record states that her e-learning modules needed to be reviewed on various dates in December 2017. The Claimant told the Tribunal that she was informed by the Respondent on 8 January that that a review of e-learning needed to be done. The Respondent says it put e-learning for C online on 15 January 2018 and that it 'went live' on 18 January 2018. The Claimant says she first accessed the on line e-learning module on 21 January 2018. On 30 January 2018, the Claimant completed the safeguarding e-learning module.

16. The Claimant was on holiday between 1 to 20 February 2018, which meant that she was not at work on two successive Wednesdays. She did not have internet access when on holiday and whilst the Respondent did not suggest to the Tribunal that it expected her to work during her holiday, Mrs Aitken did accept that she was effectively critical of the Claimant's failure to undertake the e learning modules over that period of time.

17. The Respondent told the Tribunal that its standard requirement was for an employee to complete the e-learning review modules within 4 weeks but that due to the Claimant's dyslexia, she was given 6 weeks from 18 January 2018 to end February 2018.

18. The Respondent had access to the system which could tell it when the Claimant had logged in to the e-learning modules and for how long. It knew that she had first logged on 21 January 2018.

19. There was no documentary evidence before the Tribunal that the Claimant had been told at the outset that she had to complete the e-learning modules prior to 28 February 2018. On 5 February (when she was on holiday) she was sent a text by Ms Aitken stating "you need to complete you're e learning ASAP please your signed up but notified you have only completed 1 thanks". There was no reply from the Claimant and Ms Aitken sent another text on 19 February 2018 stating "Hi Kelly I need you to complete your elearning as you are out of date and haven't attempted any since 31st January, you have a duty of care to complete mandatory training, can you have this done ASAP if you have concerned about completing these please let me know". The Claimant responded 4 minutes later on the same day with "I have been on holiday for 2 weeks which means not touched it I don't start back to work till wed so that's when I will look at it again". Mrs Aitken immediately responded "Great can you ensure you have completed this by the end of February, Thanks" and the Claimant replied immediately "Not a chance in hell there 10 there and I'm also doing my nvq", Mrs Aitken responded: "Kelly you have had ample time to complete as have everyone, but you have made no attempt I will cover your shift

this Wednesday in order for you to complete all before reporting for duty on the 28th". The Claimant replied "So you paying me for the shift as I been on holiday they were only given on 18th of Jan i worked on them at aa some as i find them iv completed 1 before my holiday iv got dyslexia what means I get more time for ALL training I would not say that is making no effort". Mrs Aiken responded "No Kelly, and it's normally a month but as I have said I will give you until 28 February over a month".

20. On 19 February 2018 the Claimant (with the assistance of her mother) wrote to Mrs Aitken as follows:

> "Your request for my completion of my e-learning is unreasonable and unlawful.
>
> E-learning was first produced on 18th January 2018, which I did not locate until 22nd January 2018. Once located I completed one section.
>
> As of the 1st February 2018 I have been on leave from work and therefore not obligated to study in leave time.
>
> I am due back this week 21st of February 2008 eight which is when I intends to continue to study through the sections.
>
> Equality act 2010 gives a duty of care to staff with a recognised disability which dyslexia is, to extend time where necessary to complete any given training required for their position.
>
> 10 days extra is not fitting or adequate for the set tasks.
>
> The agreement between us a verbal agreement and has not covered any reduction in pay cut in pay or reduction of shifts.
>
> Our contract is only verbal due to the fact that the contract you have on record has not been signed by me and is therefore not legally binding.
> This Wednesdays shift (21st February 2018) I am verbally contracted to do, so for you to withdraw my shift and pay is in breach of the verbal contract we have and therefore unlawful.
> You require me to attend a supervisionary meeting this I agreed to do on Friday, 23rd February 2018 at 9:15 am.
>
> I require a response to this correspondence by midday Wednesday, 21 February 2018."

21. In fact, following a telephone call with Mrs Potter on 20 February 2018, it was agreed that the Claimant would complete only the manual handling e-learning module prior to 21 February – this was done on 20 February and the Claimant attended work on 21 February.

22. Friday 23 February 2018 was recorded in the Claimant's NVQ Plan and Review Record as the next target date for a number of actions. On 23 February 2018, a supervisory meeting had been requested by the Respondent. As it happened, on that day the Claimant's NVQ supervisor was present and could join the meeting with Mrs Potter, which also dealt with the NVQ requirements. The e-learning was not discussed. In retrospect, this was a missed opportunity.

23. On 27 February 2018, Mrs Potter texted the Claimant to state "Just a reminder that all e-learning needs to please be completed before returning to duty"; to which the claimant replied "All my e-learning will not be finished before tomorrow night"; and Mrs Potter stated "Then please come in tomorrow to discuss with Lisa; as 41 days have been given for you to complete these and under The Lodges terms and conditions[1] you are unable to return to duty without these up-to-date. Thanks"; the Claimant responded "Lisa had a chance to talk to me about it on Friday I was there till 1 she has the letter which I sent she has not give me response to iv had 22 days which which is not adequate is to complete all 11 units". Mrs Potter replied "The meeting on Friday was to do a supervision, which I carried out with you. This also assisted you with your NVQ 3." The Claimant replied "And Lisa also new e learning would not be finished by end of the month she should of come and had a discussion with me about it then".

24. The Claimant completed one more module, 'Medication', on 26 February 2018 before her next shift on 28 February. When she attended for that shift she was not allowed to work. The Respondent cited the failure to complete the e-learning and told the tribunal that this was a safeguarding concern. The Claimant had completed 3 out of 11 modules by that date.

25. On 3 March 2018 Mrs Potter wrote to the Claimant to request a meeting "to discuss, policies and procedures, e-learning, contract and supervisions" and requested available dates over the next 2 weeks.

26. On 5 March 2018, Mrs Aitken wrote to the Claimant as follows "

> "RE: mandatory training
>
> It has been brought to my attention that you have not completed the mandatory e-learning courses that must be adhered to if you wish to work at The Lodge.
> As you are aware this requirement is set out by the CQC (Commission for Quality Care) and is non-negotiable.
>
> It is our responsibility as an employer to insure that all training is fully up-to-date for every member of staff who works at The Lodge. If you fail to comply then we have no choice other than to remove you from the Rota without pay until such time you can produce your certificates.
>
> We have a Duty of Care to the residents and to other staff members to provide every member of staff with the correct training in order to carry out their role. If you are not willing to undertake this training then you are not 'Fit for Duty' and under Health and Safety regulations and the Health and Social Care requirements we cannot allow you to work."

27. On 6 March 2018, the Claimant responded to both the 3 and 5 March 2018 letters stating:

> "I do not require another meeting with you to discuss matters that have already been discussed.

[1] This is a reference to the new terms and conditions that the Respondent wished its employees to sign. There was no proof before the tribunal that the Claimant had signed such terms at any point. This was ultimately accepted by the Respondent at the hearing.

As you are well aware my contract is not legal because it has been signed by someone else without my consent or knowledge.

My supervisionary has already taken place on Friday 23rd February at 9:15am. I gathered you had said all you had to say then concerning the issues you've raised in your letter. On 28 February 2018 I came into work willing to work my shift, to be told that you had covered my shifts, my co-worker also informed me that you had stated "that because I have not completed my e-learning I could not work and I would not be receiving any pay either.["] I am very disgusted about how you handled this matter, not letting me know before the start of my shift and not even having the common decency to answer the phone when I called to discuss the situation.

Not only has this been handled very unprofessionally but it is also illegal as this is an unlawful deduction of pay. With that in mind I would like clarification that I am going to get paid for my last shift.

As stated in my previous letter (see copy enclosed) my e-learning will be completed in due course.

I have also sort professional advice concerning these matters and training is encouraged to be completed in working hours, that includes e-learning.

My e-learning should have been presented with a ample time to complete it, so, it just rolls from one to another, not left until it was 2 months out of date.

I have myself spoken to ACAS, QCQ and skills for care, to find out my position on both your treatment towards me as well as requirements of law concerning training my job and my pay.

There is no legislation about requirements or training, it is down to competency and knowledge in my working environment, still seeings as I have been in your employment for over 18 months, I must be adequate in both these roles.

The contract I have with your company at present consists of a letter from Mrs L Aitken explaining my working hours and my payslip contracting my pay, anything concerning handbook references and training etc, I have no contract in place as I have stated at the beginning of this letter."

28. The claimant requested a written response by 16 March.

29. The Tribunal considered that whilst the Claimant was making some valid points, she also was not helping the situation by effectively refusing to attend the meeting suggested by the Respondent.

30. On 15 March 2018, Mrs Aitken replied:

"My response to your letter is as follows:

1. As of today's date I note that you have still not completed your mandatory training. You arranged for your NVQ assessor to come to the home on 23rd February to carry out supervisions and assessments without my prior knowledge. Samantha Potter

carried out these observations and I understand these were satisfactory to meet your NVQ requirement. As the Care Manager of the home it would have been courting us to seek my agreement in this regard.

2. Your employment contract was agreed on 1st March 2017 and you have a copy of the signed contract. You have not raised any issues with this until now?

3. It is a legal requirement that mandatory training is in place for all staff. Shifts will not be made available if this training is not valid and in date.

4. All staff are paid for their training and your are supported to complete training either in work time or their own time.

5. I'm aware you are currently studying you the Diploma level 3 to which I believe you are progressing well. You have completed your e-learning for previous period of your employment. You have also achieved the Care Certificate and completed this well within the time scale. When I texted you politely to remind you to please update your e-learning (as I do with all staff) you responded by saying "not a chance in hell".

Since signing you up on 18 January 2018. As I have access to the e-learning so I can review staff progress to date you have done, and you did not start this until 30 January 2018

30th January Safeguarding - Course time with the exam 51 minutes
20th February Moving and Handling 57 minutes
26th February Medication 1 hr 1 minute
6th March 2018 Fire Awareness 2 hours 8 minutes
11th March infection Control 33 minutes

You now need to complete the remainder of these you have 6 outstanding these need to be completed before you report for duty as you have been told repeatedly.

As you are aware the home offers an open house policy and you are able to make an appointment to come and speak to me at any time to discuss any matters of concern. To date an appointment has not been requested.

I feel that communication has no broken down between us as you appear to be taking advice from outside sources. Therefore if you wish to take this further I suggest that you make an appointment to see Mrs Lumb at which time you can discuss your future employment etc.

In the meantime kindly refrain from entering the building outside of working hours."

31. The Claimant commenced early conciliation with ACAS on 20 March 2018. Her certificate is dated 20 April 2018.

32. An informal meeting took place on 5 April 2018. Mrs Potter's note of that meeting states that:

> "I spoke with Mrs Grace after her mca/dolls training today, I asked why she felt she was unable to carry out her e-learning, she reply I do one week as have a very busy life, I explained there are time limits for these, to which she replied, they were two months over due, which was correct however we have a 3 month window.
>
> I explained that she was able to carry these out last year within the timescale and carry out all her care certificate, she replied but I wasn't doing my nvq at this time.
>
> Mrs Grace also expressed that due to her being dyslexic she was unable to carry these out within the time frame, I did explain again that I have given her more time to complete these.
>
> We were going round in circles about why these weren't done, which all lead to the fact she didn't have any time within her busy life to complete more than one a week.
>
> I left this by saying the meeting needed to be held with Mrs Lumb, she replied that's fine, she will be bringing her mum who has been filling out her paperwork and was legal, I asked if she had paperwork to provide that she is able to be her legal representation, Kelly said no, so I explained it would need to be someone else, she said a ACAS person may come, I explain this would be fine.
>
> I also explained I was taking over the contracts and I would be unable to offer her a contract with her not completing their e-learning as she would be on fit for work.
>
> I expressed that the relationship between herself and the home manager needed to be addressed as to work in this environment communicate has a big influence. This is Grace said it was professional with Lisa and not personal."

33. A training session for staff had been arranged for 11 April 2018. On 10 April, Mrs Potter texted the Claimant to say "Morning, can you please not attend training tomorrow, but use this time to complete your e-learning. You are welcome to come in and use our laptop for the four hours would be in training. Thanks". The Claimant responded "Glad of that I couldn't make it anyway nobody to gave kids". The Claimant told the tribunal that her excuse was not true and that she simply said this to save face. At the hearing, the Claimant was asked if she has considered saying at that point that she could come in but needed help if she came in and she said no. Again the tribunal felt that the Claimant had not helped the situation at this point.

34. By text on 11 April 2018, the Claimant was asked to attend a meeting on 26 April. She replied that she couldn't make that meeting. She was asked for a couple of dates and times. She replied that she was finding it hard to find any dates and times. On 16 April she texted to say that she was unable to make a training session on 17 April. When asked for a reason why, she merely states 'personal reasons'.

35. By 26 April 2018, the Claimant had completed her e-learning.

36. On 27 April 2018 Mrs Potter texted to state "morning, now all your e-learning in [is] complete can you please arrange a meeting with myself & Lisa to sign your new contract of employment as their has been an increase in wages. Also to read and sign our policies & procedures paperwork & same with safeguarding".

37. The Claimant offered to collect the contract and the policies and procedures. Mrs Potter agreed that she could have a copy of the contract – but said that the policies and procedures could not leave the building. And later that same day, Mrs Potter states by text "we have to have a meeting with you before you can return to work as we need to find a way to move forward and as said in last text the policies folder can't be taking out the building."

38. On 27/4/18, the Claimant presented her ET1 to the tribunal.

39. The Claimant queried why she couldn't return to work as she had completed her e-learning and was told on 30 April 2018 by text from Mrs Potter "you are required to attend a back to work meeting tomorrow with Lisa and Sheryl in order to move forward for you to recommence working duties, please bring along your contract." The Claimant replied that she was not free tomorrow and then she was asked to tell them when she was free.

40. On 8 May 2018 when the Claimant queried whether she was required for some dementia training on the following day, she was told initially that there was no need for her to attend as it wasn't mandatory and then when she asked if that meant that she could attend if she wanted, Mrs Potter said No.

41. On 22 May 2018, the Claimant wrote to the Respondent R [148-149] agreeing to attend a meeting on certain conditions and the Respondent wrote back on 29 May 2018 proposing a meeting on 18 June 2018 telling her who would be in attendance, with a proposed agenda and notification that minutes would be taken.

42. On 12 June 2018 the Claimant wrote to say that due to unforeseen circumstances she couldn't attend on 18 June 2018 and offering alternative dates. From the list, the Respondent scheduled a meeting for 4 July 2018.

43. The meeting took place on 4 July and the Respondent's minutes state that "under our CQC Registration Staff Training is mandatory. This is undertaken annually within any care sector in which we have a time framework to ensure that all staff are competent within their role".

44. There was no agreement reached at the meeting.

45. On 11 July 2018, Mrs Potter wrote to the Claimant repeating that she needed to sign her contract and read over policies and procedure before she could recommence employment and stating that they had decided to freeze her NVQ. They offered to sit with the Claimant to go through the policies if she felt unable to do that alone.

46. On 16 July 2018, the Claimant responded to the Respondent stating that she was under the impression that she wasn't allowed back to work until after the tribunal. She also requested policies and procedures in an audio format.

47. On 23 July 2018 there was a Case Management Hearing at the Employment Tribunal.

48. By letter dated 30 July 2018 (received by the Claimant on 9 August 2018) the Respondent wrote to the Claimant: 'In order to facilitate your return to work we are happy for you to attend at the care home and you will be given facilities to go through these documents and facilities to have them explained to you should you wish. We are happy to arrange a senior member of staff to go through these documents with you at your comfort and leisure at the home.'

49. On 10 August 2018, the Claimant wrote to the Respondent asking how long it would take to go through the policies and procedures. The Respondent replied to the Claimant on 16 August 2016 stating that "the policies and procedures run to many pages, it will not be possible for you to take any of them home this is for reasons of confidentiality and our obligations under the Data Protection Rules." It is clear from the reference in the next paragraph to the Claimant being 'familiar with the vast majority of these documents' that she is being asked to look not only at the new policies abut also the existing policies. Mrs Potter was incorrect when suggesting to the tribunal in her evidence that only the 18 new policies needed to be reviewed. The letter of 16 August 2018 went on to suggest that the Claimant could perform this task in "say 2 to 3 hours". The Respondent asked for a meeting to achieve this in the next few days and it chased the Claimant on 23 August for a response. She replied on 4 September 2018 complaining about the quantity of recent correspondence, suggesting that 3 hours was insufficient and repeating the request to have the policies in audio format.

50. The Claimant chased for a response on 12 September. On 20 September 2018, the Respondent sent the policies, highlighting which policies were new and suggesting that the Claimant read these within a week. The tribunal was shown that the total policy bundle was about 1 lever arch file containing 124 documents. The Respondent also referred to the requirement that the Claimant sign a new contract.

51. On 6 September 2018, a comprehensive expert Occupational Health report recounted that the Claimant had dyslexia, that she needed more time for reading and writing and gave specific measurements of the Claimant's reading, comprehension attention and concentration abilities – which were in the low ranges, albeit that her intelligence was in the average range.

52. On 27 September 2018 the Respondent's lawyers wrote to the Claimant requesting a copy of the dyslexia expert report. At that time, the Respondent's view was that the Claimant was not disabled within the meaning of the Equality Act. At the tribunal hearing on the first day, the Respondent conceded for the first time that the Claimant was disabled within the meaning of the Equality Act 2010 and Mrs Potter told the tribunal that until she saw the report, she was unaware of the extent of the Claimant's disability.

53. On 6 October 2018, the Claimant's mother, Ms Carter, wrote, on the Claimant's behalf, to the Respondent's solicitors, complaining the organisation of and the length and number of the policies and procedures.

54. A meeting finally took place on 24 October 2018 when the Claimant sat down with Mrs Aitken and was successfully taken through the policies. The Claimant has not to date signed any new contractual terms and conditions.

55. The Claimant remained unhappy as set out in her letter of 2 November 2018, but she clearly indicated to the Tribunal that the period of financial loss claimed ends with her return to work on 24 October 2018. The Tribunal were informed that there has been a subsequent period of illness. The Claimant did not suggest that this was related to her disability or the matters to be determined by the Tribunal.

56. The Respondent produced a list of signatures from staff indicating that they had read and understood all policies and procedures. There was a inconsistency in the Respondent's evidence as to whether they required an annual review by the employees of all policies and procedures – even if there were no new policies and / or whether only new polices needed to be looked at.

57. The Respondent did not dispute that the Claimant was a good care worker.

58. The Respondent presented us with a CQC document headed 'Regulation 18 Staffing' which stated that staff must receive the support, training, professional development, supervision and appraisals that are necessary for them to carry out their role and responsibilities. They should be supported to obtain further qualifications and provide evidence, where required, to the appropriate regulator to show that they meet the professional standards needed to continue to practice.

59. The Respondent was given the opportunity to provide to the Tribunal any further evidence that the CQC has a *requirement* that annual e-learning take pace or a requirement that if all annual e-learning modules had not been completed, an employee could not return to the workplace pending that completion. The Respondent reported to the Tribunal that there was no such requirement or rule.

60. The new contractual; terms and conditions that the Respondent wishes the Claimant to sign up to included the following provision in the section headed Training costs:

> "The company reserves the right to remove a member of staff from the Rota if mandatory training certificates are not in data valid. Staff will not be paid until they resumed duties with the appropriate certificate."

61. The Tribunal was far from convinced that this section – which appeared to relate to training courses rather than e-learning would have applied to the Claimant even if this term applied to her, but the parties agreed by the time of the hearing that there being no evidence that the Claimant had ever agreed to such a condition, it definitely did not apply to her during the relevant period.

62. We were shown the Respondent's policy on Training and Development which stated "There will be a programme of in-house training and E-Learning is common practice as this allows staff to work at their own level and pace this can be done using the work place PC or at home. Staff will be paid for their time. Once commencement of E-Learning, staff will be given 4 weeks to complete these on-hour training course staff requiring additional support or time this can be discussed and agreed with the management. Details of dates and topics will be posted on the notice".

63. As stated above, the Tribunal considered that the Claimant had not helped herself on several occasions. The Tribunal also considered that there was a hardening in the tone of the Respondent's approach to the Claimant over the period described above which also did not help the parties to move to a satisfactory resolution.

Conclusions

Failures to make reasonable adjustments

64. The respondent accepted that it operated a PCP of requiring employees to complete all e-learning modules within a particular period. The standard period for e-learning was set out in the Training and Development policy as 4 weeks.

65. The Respondent also accepted at the hearing that a person with dyslexia such as the Claimant would be substantially disadvantaged by such a PCP and that the Claimant was so disadvantaged.

66. The question for the tribunal was whether in giving the Claimant a 2 week extension, the respondent had taken all such steps as it is reasonable to have to take to avoid the disadvantage.

67. The Tribunal have found that the Respondent did not at the outset notify the Claimant of the 6 week deadline. The Claimant was away for nearly 3 weeks of this period and was out of the workplace for 2 of her weekly shifts. The Claimant did indicate that she needed more time. The Tribunal understand that the Respondent made an assumption on the basis that the Claimant had successfully completed the initial training in the time allotted and that she did not expressly tell the Respondent that she no longer had the help available from her husband and her mother that had assisted her with the initial training in 2016. However, contrary to the repeated assertions of the Respondent in correspondence to the Claimant, there was no absolute requirement from the CQC for the e-learning reviews to be completed within a specific period of time. It was clear to the tribunal that the Respondent has flexibility in its compliance with the CQCs guidance. Weighing up all the relevant factors in the circumstances of the findings of fact above, the tribunal concluded that it would have been reasonable to have to have notified the Claimant from the outset as to the length of time that she had; and to have extended the time beyond 2 additional weeks. The Respondent should have enquired at that time as to whether there was any assistance that the Claimant required. Accordingly this claim succeeds.

68. The respondent accepted operating a PCP of refusing to allow employees who has not completed their e-learning to return to work until the modules were completed. Such employees were taken off the rota and not paid. The Respondent considered at the time that it was within its contractual rights to do so - under the new contractual terms and conditions that the Claimant did not sign – although the Respondent's position had changed by the date of the hearing as recorded above.

69. The questions for the tribunal were whether the operation of that PCP puts disabled persons such as the Claimant at substantial comparative disadvantage, whether the Claimant was put at such a disadvantage and whether it would have been reasonable to have permitted the Claimant to return pending the completion of the e-learning.

70. Given that the evidence of the Respondent was that it was willing to provide assistance from co-workers, a person with dyslexia was at a substantial disadvantage in being unable to return to the workplace prior to the completion of the e learning modules. The Claimant was under that disadvantage.

71. The tribunal have found that the Respondent's PCP was neither an implementation or a requirement of guidance from the CQC; and if the Claimant had been able to return to the workplace, she may have had assistance with the completion of her e-learning from colleagues as she had had in 2016. As an existing employee whose performance had not been in question, without prejudice to any specific requirement to complete any specific module e.g. manual handling, the tribunal was satisfied that it would have been reasonable for the Respondent to permit the Claimant to return to work prior to the completion of all of the e-learning modules within a period of time which was both reasonable and practicable and notified to the Claimant at the outset. For the avoidance of doubt, the tribunal did not consider that an open-ended approach should be adopted, nor that the actual length of time taken by the Claimant was necessarily reasonable. There are other avenues open to the Respondent than the rigid option of removing the employee from the rota and stopping pay. Action under disciplinary or capability processes including suspension is open to an employer if an employee fails to comply with an instruction to complete training. Accordingly this claim succeeds.

72. The Tribunal had to determine whether the Respondent operated a PCP of refusing to allow employees who had not undertaken a review of policies and procedures (either in their entirety or just new policies and procedures) to continue to work until that had been completed.

73. The Claimant was not permitted to return to work until she had reviewed the policies. The Respondent says that this was a rule which would have applied to any staff in the Claimant's position. The Respondent had collated the signatures of the employees upon completing that review in 2018. The tribunal was therefore satisfied that such a PCP was being operated.

74. The Tribunal then went on to determine whether that placed disabled people at a substantial disadvantage and whether it placed the Claimant at a substantial disadvantage. The Claimant was repeatedly asked to come to a meeting to review the policies and procedures – albeit that the Respondent's priority at times appeared to be getting a signature on a new contract rather than the review of the policies and procedures. The solution ultimately arrived at on 24 October 2018 could have been arrived at much sooner. There was some fault on both sides in that regard. The Tribunal was unimpressed with the Respondent's conduct in dealing with this including the resistance to sending the materials to the Claimant (for spurious 'data protection' reasons) and considered that it was primarily for the Respondent to have resolved the difficulty. However the evidence before the tribunal did not suggest that the request that the Claimant come in to review the policies and procedures placed her at a substantial disadvantage as a person with dyslexia.

75. On the question of whether it would have been reasonable to permit return pending such a review, this did not arise given the tribunal's finding on the previous question and this claim fails.

76. It follows that the Claimant's claim for unlawful deduction from wages succeeds (on admission by the Respondent). The first two claims for failure to make reasonable adjustments also succeed and the third claim for failure to make reasonable adjustments fails.

77. The parties can resolve the issue of compensation between themselves and if they do so, they are directed to inform the tribunal as soon as possible. If that is not possible, then the same tribunal must determine that question and therefore this matter is listed for a one day remedy hearing – to determine (a) injury to feelings; and (b) the precise calculation of loss of earnings.

The following orders are made

1. By **10 April 2019**, the Claimant is to send to the Respondent:

    1.1 an updated Schedule of Loss indicating how the sums are calculated for loss of earning from 28 February 2018 and prior to the return to work on 24 October 2018; and

    1.2 a short w/s setting out her contentions in relation to Injury to Feelings.

2. By **24 April 2019**, the Respondent is to respond with:

    2.1 a counter schedule (or an indication that the Claimant's figures are agreed); and

    2.2 if the Respondent wishes to do so, a short document setting out any response to the Claimant's contentions on Injury to Feelings.

3. If the parties cannot agree the loss of earnings question, the Claimant is directed to produce a paginated bundle of evidence of the loss of pay including all documentation relevant to that issue, including pay slips if available. The bundle is also to include any evidence relevant to Injury to Feelings and is to be sent to the Respondent by **8 May 2019**. 4 copies of the bundle are to be brought to the hearing. It should not be sent to the tribunal prior to the remedy hearing.

4. The case will be listed for a one day remedy hearing on the first available date after 22 May 2018.

Employment Judge Allen

Date: 21 March 2019

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