Case No: 2303110/2017

EMPLOYMENT TRIBUNALS

Claimant:	**Mr P Smith**
Respondent:	**Royal Mail Group Ltd**
Heard at:	**Ashford Employment Tribunal**
On:	**17 and 18 September 2019**
Before:	**Employment Judge Anne Martin** **Ms Dengate** **Mr Adkins**

Representation
Claimant: **Ms H Compton - Counsel**
Respondent: **Mr Hartley - Solicitor**

JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant's claims of unfair dismissal and disability discrimination are dismissed.

REASONS

- Reasons were given at the conclusion of the hearing. These written reasons are provided at the request of the Claimant which was made at the hearing.
- The Claimant brings claims of disability discrimination (Discrimination arising from disability) and unfair dismissal. The Respondent defended the proceedings on the basis that the Claimant was fairly dismissed for some other substantial reason by breaching its absence policy. Discrimination was denied.

The relevant law:

- **Discrimination arising from disability s15 Equality Act 2010**

  (1) A person (A) discriminates against a disabled person (B) if—

  (a) A treats B unfavourably because of something arising in consequence of B's disability, and

  (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

  (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

4. **Unfair dismissal s98 Employment Rights Act 1996**

4.1 The legal provisions relating to unfair dismissal are contained in Part X of the Employment Rights Act 1996.

4.2 Where an employee has been dismissed, an employer has to show one of the prescribed reasons for dismissal contained in sections 98(1) and (2). It is trite law that the reason for dismissal is a set of facts known to, or beliefs held by, an employer at the time of dismissal, which causes that employer to dismiss the employee. The reason for dismissal does not have to be correctly labelled at the time of dismissal and the employer can rely upon different reasons before an employment tribunal (Abernethy –v- Mott, Hay and Anderson [1974] IRLR 213, CA).

4.3 If there is a permissible reason for dismissal, the Employment Tribunal will consider whether or not the dismissal was fair in all the circumstances in accordance with the provisions in section 98(4):

"the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case"

4.4 The standard of fairness is achieved by applying the range of reasonable responses test. This test applies to procedural as well substantive aspects of the decision to dismiss. A Tribunal must adopt an objective standard and must not substitute its own view for that of the employer. (Iceland Frozen Foods –v- Jones [1982] IRLR 439, EAT as confirmed in Post Office –v- Foley [2000] IRLR 234, CA; and Sainsbury's Supermarkets Ltd –v- Hitt [2003] IRLR 23, CA).

The agreed issues:

The facts

- The Claimant commenced employment with the Respondent on 2 March 2998. At the time of his dismissal the Claimant was an Operational Postal Grade.
- At the material time, the Claimant was disabled for the purposes of the Equality Act 2010.
- In line with the Respondent's Sickness Absence policy and Attendance procedure, the claimant received an Attendance review Level 1 Warning following a total of four absences due to sickness between2 January 2016 and 5 October 2016 totalling 7 days' absence within a 12 month period. None of these absences were related to the Claimant's underlying disability.
- Following two further absences on 18 November and 23 January 2017 totalling 11 days absence, the Claimant was issued an Attendance Review Level 2 Warning. Neither of these absences were related to the Claimant's underlying disability.
- Following receipt of his Attendance Review Level 2 Warning, the claimant had a further period of absence on 12 April 2017 due to an upset stomach and a further period of absence on 23 June 2017 due to heatstroke.

Law and Issues

Unfair dismissal

1. The claimant was dismissed form his employment with the Respondent on 9 September 2017 on the grounds of unsatisfactory attendance with 12 weeks' notice. The Claimant alleges his dismissal was unfair.
2. Was the Claimant dismissed for a potentially fair reason for dismissal, specifically: Some other substantial reason?
3. Whether the Respondent acted reasonably by dismissing the Claimant for unsatisfactory attendance.

   Having regard to all the circumstances, including the size and administrative resources of the Respondent's undertaking and in accordance with the equity and substantial merits of the case.
4. In determining whether the dismissal was fair the Tribunal will consider whether:
   i. The Respondent followed a fair procedure overall?
   ii. The Respondent's decision cam within the range of reasonable response by a reasonable employer acting reasonably. The Tribunal can not substitute it's own view (Iceland Frozen Foods v Jones [1982] IRLR 439 [EAT]
5. This test applies both to the decision to dismiss and to the procedure by which that decision is reached (Sainsburys Supermarket v Hitt [2003]). This means that the Tribunal has to decide whether the investigation was reasonable, not whether it would have investigated things differently.
6. If the Tribunal determines that the Respondent failed to follow a fair procedure, it should consider whether it should reduce the compensation to the Claimant if the Tribunal finds that the dismissal would have occurred even if the Respondent had followed a fair procedure , and by what amount Polkey v AE Dayton Services Ltd [1987] IRLR 503.

Disability Discrimination

7. Did R know o (or could reasonably have been expected to know) that C had a disability: s15(2) Equality Act 2010?
8. Did the Respondent treat the Claimant unfavourably because of something arising as a consequence of his disability: s15 of the Equality Act 2010?
   i. By both Kevin Culverhouse and Joe Miranda being critical of the Claimant for not wearing a hat on 21 June;
   ii. By both Kevin Culverhouse and Joe Miranda considering the Claimant's overall attendance poor and being critical of the same.
9. Can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim: s15(1)(b) of the Equality Act 2010

The Tribunal's findings of fact

10. The Tribunal has found the following facts on the balance of probabilities having heard the evidence and considered the documentation it was taken to. These findings are limited to those that are relevant to the issues, and necessary to explain the decision reached. All evidence was considered even if not specifically referred to.
11. The Claimant was employed by the Respondent on 2 March 1998 as full time postman. He was dismissed on twelve weeks' notice, after 19 years and 7 months with the effective date of termination being 2 December 2017 (EDT).

12. The records show Claimant had various health issues including in 2010 the detection and successful treatment of a brain tumour. After this, there were no further absences relating to this condition. In 2013, Claimant had to undergo serious knee surgery. Other absences up to the point of dismissal were for a variety of other minor health concerns, not related to previous surgery or the tumour.

13. The Respondent operates an attendance policy which has been in place for many years and is agreed with the unions. This is a strict policy, as accepted by the Respondent, and the reason for this is because the Respondent have statutory obligations regarding service which must be maintained, and it needs a reliable stable workforce and as a consequence cannot and does not tolerate much absenteeism.

14. The attendance policy sets out guiding principles which include that employees should make every effort to meet the attendance standards; Employees will be treated with dignity and respect and their attendance record considered on an individual basis taking into account previous attendance history and any mitigating factors and that the formal attendance process has three stages: two reviews and, in the absence of an improvement, consideration of dismissal. The first review is prompted if an employee has four absences or 14 days absence in a 12 Month period. There is a second review prompted where there are two periods of absence or 10 days of absence in the next 6 months following the attendance review, once a notification of review stage 1 has been issued. Stage 3 (consideration of dismissal) is prompted where there are two periods of absence or 10 days absence in the next 6 months following an attendance review 2 formal notification. At each stage where attendance has improved the employee can come off the process or go back a stage.

15. Absences arising from disability are normally discounted when deciding whether the standards have been met but will be discussed at the Welcome Back Meeting. Absences resulting from accidents at work are normally discounted but in exceptional circumstances a manager may review duty related absence and decide that the absence should be considered under the formal attendance process. Mr Miranda explained this happens for example, where there is blameworthy conduct. Occupational Health service advice will be sought as appropriate to assist managers making decisions. There is no appeal mechanism available for stages 1 and 2.

16. The Respondent provided a summary of absences which show that since 2011 (ie after the Claimant's surgery for his tumour) the Claimant triggered the absence procedure at stage 1 five times and triggered stage 2 twice.

17. The Claimant's representative cross examined the Respondent witnesses about whether two of the previous absences should have been discounted as being work related. These were the absences for stress and for a bad back. The stress, it is said, resulted from a reorganisation (which the Respondent says is a regular thing that happens every few years and which the Claimant confirmed happened on this basis in his evidence) and the absence for the back injury occurred after the Claimant arrived at work on this motorbike which he dropped and picked up, injuring his back in the process. This was said by the Claimant to be work related as the Claimant was on work premises when it happened. However, when the Claimant was being cross examined he clearly said that he had no concerns about the use of previous absences under the process and his concern was only in relation to the final absence which was for heatstroke/sunstroke (both terms being used in the paperwork). The Claimant was confirmed in cross examination that there were no particular circumstances to say that the absences referred to in the stage one processes should not be counted.

18. Given the stance taken by the Claimant in his evidence and the Respondent's view that the issue with the Claimant's back or the stress were not work related as the Claimant was not undertaking work related duties when he dropped his motorbike and he acknowledged that he had significant personal problems during the time he was absent with stress, the Tribunal finds that the previous absences were legitimately taken to account by the Respondent and therefore focused on the absence for sunstroke/heatstroke.

19. This absence was for two days following 21 June 2017. On that date it was hot with temperatures reaching up to 32 degrees. The Respondent has a severe weather policy which includes heat. There is a section on Severe Weather Hazard Controls which include suspending full or part deliveries/collections, ensuring staff have appropriate clothing etc, access to water. When there is severe weather a risk assessment is normally done by the unit manager. No assessment appears to have been done on that day. Mr Culverhouse conceded it was hot and could be considered severe weather. Mr Miranda did not consider 32 degrees to be severe weather which would invoke the policy. The Tribunal find that whilst 32 degrees is hot, it is relatively normal in the summer months. The Respondent has hats available for staff to use in sunny weather. There is no dispute that the Claimant did not wear a hat on 21 June 2017, although he took other precautions such as extra fluids and sun cream. The Respondent provides detailed guidance to staff about how to deal with weather conditions and these are set out below when discussing the outcome of the Claimant's appeal.

20. On the Claimant's return to work there was a Welcome Back Meeting. This is recorded in a document which the Claimant signs as being accurate. It is recorded "**When at home spent time in garden which exacerbated the sun stroke**". This absence triggered the stage 3 Consideration of Dismissal hearing with Mr Culverhouse. There is no dispute about this trigger being correctly prompted. In accordance with policy, a referral was made to OH Assist with Dr Fisher who conducted a telephone interview with the Claimant. The resulting report (says "**the absence due to 'heatstroke' occurred on a very hot day in June this year. Although he was wearing sunblock and drinking appropriate fluids, he did incur a significant sun and heat exposure that day at work, and, unfortunately then went into his garden when he got home he tells me. This resulted in him feeling really quite unwell for 48 hours but he has made a full recovery. As some of the sun and heat exposure occurred at work, in exceptional weather conditions, this absence would be considered at least in part, work related".**

21. At the hearing Mr Culverhouse, who was the Claimant's line manager, had this report, the Welcome Back Meeting notes, and a record of the Claimant's absences going back to 2005. The Claimant was accompanied by his trade union representative at this hearing and by another representative at the subsequent appeal.

22. In this meeting Mr Culverhouse asked the Claimant if he had been wearing a hat on 21 June 2017, to which the Claimant replied that he had not and that he did not like wearing hats. He was asked about how he coped on other days to which the Claimant said he did not recall other days being that hot. Mr Culverhouse asked the Claimant why he went into the garden, and Mr Smith said he had to let the dogs out. There is a manuscript note from the Claimant on the typed minutes of this meeting saying "**I did not go into the garden, I let the dogs into the garden for a wee etc. I stood at the back door**". This was the first time this was said. The Tribunal takes note that the Claimant's working hours were from 6 am to 2.00 pm and he said he lived a 10-minute motorbike ride away from work. He would therefore have returned home at the hottest part of the day.

23. The Claimant maintained that this was a work-related accident and should therefore be discounted. Mr Culverhouse did not agree. He considered the contradiction in the Claimant's welcome back interview and the Dr Fisher report and what he was now saying in this hearing about being in the garden and concluded that the two earlier references to him being in the garden reflected what did happen and that the Claimant was now changing his story as he realised his job was in jeopardy. He said that he usually went by the account given closest to the time of the event as being accurate. The Tribunal note that the Welcome back meeting was on 27 June 2017, and his discussion with Dr Fisher was on 25 July and what he said at those two times which were a month apart was consistent. The OH report said there was no underlying condition affecting absences.

24. Mr Culverhouse was aware of the Claimant's good work record as he had been his manager for several years. He was aware of the Claimant's length of service, and clean disciplinary record and therefore did not need to make any enquiries about these matters. He concluded that the Claimant's "**current attendance level was unacceptable**". In his evidence he said he did not look back to the earlier longer absences for surgery for the brain tumour or knee but focused on what had led to the stage 3 process being triggered. The Tribunal accepts this, particularly as the outcome letter refers to the Claimant's current attendance levels and not historic absences.

25. The Claimant now says that he cannot wear a hat because of the effects of the surgery. This was not raised at the Consideration of Dismissal hearing or indeed at the appeal and there was nothing to alert Mr Culverhouse that there was a medical problem with wearing hats. Mr Culverhouse did not undertake further investigations about the hat and whether wearing one would have helped in the sun which was put on the Claimant's behalf that he should have done. The Claimant said he normally had a hat in his car, but it had been stolen, the inference being that he would wear a hat when needed. The Claimant wore a motorbike helmet when commuting to work and said he could do this as the helmet is ventilated and he only wears it for short periods of time. The Claimant did not raise issues about not being able to wear a hat on 21 June 2017 when it was hot. Mr Culverhouse said that had he done so then adjustments would have been made and the Tribunal has no reason to doubt this especially in light of the information given about what to do in hot weather which was set out in Mr Miranda's outcome letter regarding the appeal and which is referred to below.

26. The Claimant appealed to Mr Miranda who heard the appeal on 25 September 2017. Mr Miranda an Independent Casework Manager and is entirely separate to the Sevenoaks operation. He had no prior involvement with the Claimant and had not met him before. He was entirely independent. The Claimant was accompanied by a union representative with whom he discussed his appeal prior to the appeal meeting.

27. The grounds of appeal were that is long service and rapport with colleagues and customers was overlooked and that the medical information said that his long-term medical health looked good. He also queried some of the entries on his sick record and asked them to be checked. This related to how the number of days was calculated and represented a query regarding about four days sickness in total.

28. The appeal was conducted as a rehearing and the Claimant was able to provide any additional information or evidence he wanted. The introduction to the appeal document records that the Claimant had the bundle of papers which Mr Miranda had and that Mr Miranda said "**The appeal is a rehearing, that means your reasons and evidence should be complete to include, material already presented at your formal conduct interview, anything you wish to expand upon and nay new evidence which has come to**

light since the. Where evidence has not changed and is already documented, then I rely on you to refer me to the specific documentation which you feel supports your appeal. I have read the papers but it's up to you to refer me to the ones that matter". This put the onus on the Claimant to provide the additional documentation and evidence. The notes of the hearing were sent to the Claimant the same day as the hearing for him to comment on. The Claimant agreed that the notes were a true record of the meeting and made no amendments.

29. The appeal hearing lasted for 50 minutes. The Claimant had no additional documentary evidence to provide at the hearing itself. Mr Miranda went through the previous absences which the Claimant had queried and concluded they had been correctly recorded. He said that rest days are included in days absence where absence straddles the rest day. The Claimant had said that they were not included.

30. The issue about whether the Claimant went into the garden was discussed and the contradiction between the Welcome Back meeting, Dr Fisher report and what the Claimant was now saying was considered. It was put forward on the Claimant's behalf by his union representative that he had previously returned to work before being fully fit which showed he did not like being absent from work. It was put forward that the Claimant's customers would miss the service he provided. There were questions put by Mr Miranda about previous absences and whether there was any underlying medical issue. The Claimant did not raise his brain tumour or that because of this he could not wear a hat. He had the opportunity to do this at the hearing.

31. Mr Miranda dismissed the appeal and upheld the dismissal finding the Claimant had been treated fairly and reasonably. The appeal report is detailed and set out the policy, the report by Dr Fisher, and the chronology. The grounds of appeal were set out and each ground considered with reasons.

32. In relation to the final absence for heatstroke, Mr Miranda set out the policy about accidents at work and concluded that the heatstroke could '**in no way'** be considered an Accident on Duty. He referred to a 'Work time Listening and Learning' brief given to staff on 30 May 2017 which says that employee should inter alia protect their head by wearing a wide brim in sun and heat. This was also on notice boards and a leaflet explaining this was also sent to each employees home address in May 2017 giving detailed advice regard sun protection. This included '**protect your head'**. He recorded that the Claimant had said at his Welcome Back Meeting that he went into the garden which exacerbated the heatstroke. He rejected the changed version of events i.e. just letting the dogs out, considering the more contemporaneous account to be more likely to be accurate. Mr Miranda refers to the Claimant's absence record as being very poor and sets out the number of absences and from this the Tribunal can see that he took all absences into account including the period of time off for surgery for the Claimant's brain tumour. The Tribunal finds that neither Mr Miranda nor Mr Culverhouse knew that the Claimant had previous surgery for a brain tumour.

33. The Tribunal accepts Mr Culverhouse's evidence (which was not challenged) that he joined the Sevenoaks office in about 2014 and was unaware of the tumour. The sickness absence records do not record what the surgery was for and the Claimant did not volunteer this information.

The Tribunal's conclusions

Unfair dismissal

34. Having found the factual matrix set out above the Tribunal has come to the following conclusions on the balance of probabilities.

35. The Tribunal find that the reason for dismissal was SOSR arising from the implementation of the Respondent's attendance procedure. The Tribunal reject the Claimant's suggestions, which were not explored in any detail, that the real reason for terminating his employment was because of antipathy between him and Mr Culverhouse (he does not suggest this with Mr Miranda who had not met before) or that it was because he was close to drawing his pension, or they wanted to replace him with part time staff.

36. The Tribunal find that the trigger points were correctly applied. The Claimant confirmed in his evidence the he had no issues with previous absences and how they were recorded. At all times the Claimant was notified of the steps in the procedure and was accompanied by a trade union representative at the hearings with Mr Culverhouse and Mr Miranda. He confirmed he had the opportunity to discuss the hearing in full with his representative prior to the meetings and was able to and did put forward his arguments against dismissal.

37. The Tribunal finds that the investigation was within the range of reasonable responses open to a reasonable employer taking account the specific reasons for this strict policy, namely the legislative requirement imposed on the Respondent to deliver post. This policy was agreed with the unions and had been in place for many years. There was nothing to alert the Respondent to any medical condition which made wearing a hat an problem and the Respondent reasonably believed that the Claimant had sat in the garden in full sun based on the contemporaneous evidence which was only contradicted at the hearing where dismissal was being considered. The Tribunal finds that it was reasonable for the Respondent to therefore conclude that the Claimant had been largely responsible for his heatstroke or at least the severity of it, taking account the detailed information given about how to protect yourself in the sun which was delivered in three different ways (in a meeting brief, notices on boards and leaflet delivered to employees home addresses) the previous month and the Claimant's length of service. The Tribunal consider it is hardly likely that this was the first day when temperatures reached 32 degrees or higher.

38. The Tribunal then considered whether the Respondent had acted unreasonably in its assessment of the levels of absence due to sickness or injury. Mr Culverhouse was clear that he only considered the more recent absences leading to the stage 3 Consideration of Dismissal process and this is confirmed in the dismissal outcome which refers to 'current' levels of absence. He used the pattern of the Claimant repeatedly triggering the process over a number of years as evidence of unsatisfactory attendance. Whilst Mr Miranda appears to have used the total absences including the surgeries in his consideration, this was reasonable given that the Claimant did not provide him the information about the tumour and this not apparent from the papers Mr Miranda had, which the Claimant also had at the hearing. However when asked about this in cross examination Mr Miranda said that even if he took out the time absent for the treatment of the Claimant's brain tumour, his levels were still **"pretty poor"** commenting that most staff never trigger stage one and that the Claimant was in his view blameworthy for the heatstroke as he did not take the necessary precautions and sat in the sun when he got home from work. He rejected the Claimant's argument that he had been given extra work that day so was out for longer. He said that the extra work ('lapsing') was given to fill up the normal working hours but that

staff were not expected to work longer than their contractual hours. This was corroborated by Mr Culverhouse in his evidence. Mr Miranda also noted that throughout the attendance review process the Claimant was asked by his managers if there were any issues or support that they could give him and he said that there was not.

39. The Occupational Health advice said that there was no underlying condition causing the absences. Both Mr Culverhouse and Mr Miranda had this information. The Claimant was dismissed for unaccepted levels of absence and the existence or otherwise of an underlying condition did not affect their decision as it was the levels of absence which caused concern. Mr Miranda said that most employees never trigger stage 1 during their employment. Clearly the Respondent did consider whether it felt that the Claimant's attendance would improve as this is reflected in the outcome letter from Mr Culverhouse who stated he did not have the confidence it would improve.

40. The Tribunal must not substitute its views on what it would have done in a similar situation. The range of reasonable responses is a broad test and given the statutory requirements on the Respondent to provide a set level of service, it is reasonable that they take a strict approach to absence. Whilst some employers may have given a last chance, it cannot be said that in these circumstances it was outside the band of responses to dismiss. There is no doubt that the absences occurred and that they triggered action under the Attendance Procedure. The question was about whether the final absence should be discounted because it was a work related injury or whether any of the previous absences should be discounted for the same reason, however given what the Claimant said in evidence the Tribunal has found that the previous absences were correctly counted. The Respondent did not consider the Claimant's absence to be work related as it considered him to be blameworthy because of not wearing a hat and in particular sitting in the garden on his return home.

41. It was acknowledged that these types of case largely turn on their facts. The Tribunal distinguishes this from the case of **Smith v Royal Mail [2003] WL 23145296**, referred to by the Claimant. A fact in this case, not present in the other Smith case, is that the Respondent considered the Claimant's actions in not wearing a hat and sitting in the garden as blameworthy and it did not have the confidence that the Claimant's attendance would improve in the future given the history of absences and repeated triggering of the absence policy. In all the circumstances, and taking particular account of the obligations on the Respondent in terms of service levels, the Claimant's claim of unfair dismissal is dismissed.

<u>S15 discrimination arising.</u>

42. The Tribunal has considered s15 Equality Act 2010 and the associated guidance paragraph 15 which are set out above. The Claimant referred to the case of **City of York Council v P J Grosset [2018] EWCA Civ 1105** which held that for a finding of unlawful discrimination to be made under s15 the employer must have treated the employee unfavourably because of something arising from the employee's disability, but the employer does *not* have to be aware that the 'something' arises from the disability; a tribunal is to assess objectively whether the 'something' arose from the disability, and may consider evidence which was not available to the employer in doing so, and whether the unfavourable treatment was justified is also an objective question, unlike the fairness of dismissal, so it is possible for a dismissal to be fair under s 98 of the Employment Rights Act 1996 but not justified under s15 EqA 2010.

43. The Tribunal is satisfied that the Respondent as an organisation did know of the Claimant's diagnosis of a brain tumour. He had two operations in relation

to this and it is inconceivable that the organisation did not know what the reason for the surgery was. This, as accepted by the Respondent imputes knowledge to Mr Culverhouse and Mr Miranda even if they did not (as the Tribunal had found) have actual knowledge. Similarly, they did not need to have actual knowledge of the something arising. The 'something' in this context is the wearing of a hat in hot weather which the Claimant said he could not do because of his previous surgery for a brain tumour. The unfavourable treatment is the implementation of the absence procedure leading to the termination of his employment.

44. The Claimant was dismissed because of his attendance record and his continued triggering of the attendance procedure ultimately leading to stage 3 Consideration of Dismissal and the dismissal itself. The Respondent has understandable reasons for a strict policy and a strict interpretation and application of it. The Tribunal has found that it was not only the issue regarding the hat that led to the disputed absence, but that the Claimant sat in the garden in the hottest part of the day which he says in this Welcome Back Meeting exacerbated the heatstroke. This is not something arising in consequence of disability. Given the Claimant's repeated triggering of the absence procedure and the Respondent's obligations regarding service the tribunal find that the legitimate aim is having a reliable workforce to ensure the standards are met and the Respondent was justified in terminating the Claimant's employment in these circumstances. The Claimant had many unrelated, non-disability related absences over six years which repeatedly triggered the attendance process.

45. The Claimant also says that because Mr Miranda used the periods of absence relating to the tumour when he assessed the Claimant's appeal, this amounted to discrimination arising from disability. Mr Miranda was asked about this when he gave evidence and as recorded above he said that even if he took out the disability related absence from 2010, his decision would not be different given the number of times the Claimant triggered the attendance policy for non-disability related absences. The legitimate aim applies to this as discussed above. Even if the Tribunal had found that Mr Miranda considering the absence for disability reasons was discrimination arising, the Tribunal would have found in the alternative, that given the number of times the Claimant triggered the attendance policy, and the undisputed need for reliable staff to meet service standards, that any such discrimination was justified. The claimant's claim of disability discrimination is therefore dismissed.

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Employment Judge Anne Martin
Date: 19/09/2019