THE EMPLOYMENT TRIBUNALS

Claimant: **Mr M Woodhouse**

Respondent: **British Telecommunications Plc**

Heard at: **Manorview House** **On:** **4 and 5 December 2019**

Before: **Employment Judge SA Shore**

Members: **Mr G Gallagher**
Mr S Wykes

Representation:

Claimant: **Mr Cooper – Trade Union Representative**
Respondent: **Ms Clayton – Counsel**

JUDGMENT

The unanimous judgment of the tribunal is that:-

1. the claimant's claim for unfair dismissal fails.

2. the claimant's claim of discrimination arising from disability contrary to section 15 of the Equality Act 2010 (EqA) fails. At all material times the claimant was a disabled person within the meaning of section 6 of the EqA. At all material times the respondent did not know and could not be expected to have known that the claimant had a disability.

REASONS

Background

1. By a claim form presented on 3 January 2019, the claimant brought complaints of unfair dismissal and unlawful disability discrimination. The claimant was employed by the respondent as a customer service engineer from 1 March 2013

until he was summarily dismissed by letter dated 28 August 2018. It was agreed that his effective date of termination was 29 August 2018.

2. The claims came before Employment Judge Johnson for a private preliminary hearing on 5 April 2019 at which the case was discussed and the following points were noted:-

2.1 The respondent did not concede that the claimant is and was at all material times suffering from a disability as defined in section 6 of the EqA.

2.2 In addition to the claim of unfair dismissal, the claim for disability discrimination was one of discrimination arising from disability contrary to section 15 of the EqA.

2.3 Orders were made for the claimant to provide an impact statement and further details of his claim.

2.4 A brief list of issues was drafted.

Issues

3. We did not consider that the issues were fully set out in the order Employment Judge Johnson. The following list of issues was agreed:-

3.1 It was agreed that the claimant was an employee.

3.2 It was agreed that the claimant had the right to claim unfair dismissal.

3.3 It was agreed that the claimant had not lost the right to claim through a time or jurisdictional matter.

3.4 The tribunal had to determine the reason for dismissal. The reason put forward by the respondent was misconduct. The burden of showing the reason for dismissal lies with the respondent.

3.5 If the tribunal finds that the reason for dismissal is a potentially fair reason, it will apply the test set out in section 98(4) Employment Rights Act 1996 (ERA) that states that where the respondent has fulfilled the requirements to show the reason for dismissal, the determination of the question of whether the dismissal is fair or unfair (having regard to the reason shown by the respondent) depends on whether in the circumstances (including the size and administrative resources of the respondent's undertaking), it acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the claimant, and this shall be determined in accordance with equity and the substantial merits of the case.

3.6 If the reason for dismissal is misconduct, then the tribunal will apply the three-stage test set out in the case of **British Home Stores Limited v Burchell [1980] ICR 303**, which requires the respondent to show that:-

3.6.1 It genuinely believed the employee guilty of misconduct;

3.6.2 It had in mind reasonable grounds on which to sustain that belief, and;

3.6.3 At the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

3.7 In assessing the reasonableness of the decision, the tribunal is guided by the case of **Iceland Frozen Foods v Jones [1983] ICR 17**, which states that the tribunal shall not substitute its decision for that of the respondent and that the decision to dismiss must be within a band of reasonable responses.

3.8 If the claimant has been unfairly dismissed, the tribunal will consider whether a reduction in any award should be made following the case of **Polkey v AE Daton Services Limited [1988] ICR 142**.

3.9 The tribunal would also consider any deduction in the amount of a basic award or compensatory award to be made as a result of the conduct of the claimant before dismissal, pursuant to section 122 and 123 of the ERA.

3.10 The tribunal will determine which remedy to award and if the remedy is to be financial, will make an award that is just and equitable.

3.11 Does the claimant meet the definition of disabled person within section 6 EQA?

3.12 If he does, was the respondent aware, or should it have been aware, that the claimant was a disabled person at all material times?

3.13 If it did or should have known, what was the unfavourable treatment that the respondent subjected the claimant to?

3.14 What was the something arising in consequence of the claimant's disability?

3.15 Can the respondent show that the treatment was a proportionate means of achieving a legitimate aim?

3.16 If the claimant's claim is successful, what amount of compensation is just and equitable?

Housekeeping

4. The parties had complied with the order of Employment Judge Johnson and had produced an agreed bundle running to three-hundred and twenty pages. On the first morning of the hearing, Mr Cooper handed up a letter dated 18 October 2019 from Doctor Linsley, the Consultant Psychiatrist treating the claimant, which

was addressed to the claimant's GP. On the second morning of the hearing, Mr Cooper handed up an e-mail he had sent to a colleague in the CWU with information he had cut and pasted from a website concerning dissociation, which is related to Post-Traumatic Stress Disorder (PTSD). We gave this document page number 324. No page number was assigned to the letter from Doctor Linsley.

5. The claimant had produced a witness statement for the hearing and also relied on his impact statement dated 17 May 2019 [39-44] and his further details of claim dated 30 May 2019 [45-46].

6. The respondent produced witness statements from:-

   6.1 Philip Walker, the claimant's line manager, who is currently engaged as Patch Manager for the North-eastern Service Delivery Team within the Openreach division of the respondent;

   6.2 David Tulip, who was the dismissing officer, and, at the time, was Senior Area Manager for the North-east Region of Openreach service delivery, and;

   6.3 Christopher Taggert, who was the appeals officer, and who is employed as Senior Engineering Optimisation Manager for the north of England within the service delivery division of Openreach.

7. Mr Tulip no longer works for the respondent and had just started a new job. Ms Clayton asked that his evidence could be taken before the end of the second day of the trial to minimise the amount of time he would have to have off from his new job. We complied with that request.

8. We had read the witness statements and had noted that the claimant has a long history of mental health issues. We were therefore mindful of the need to make such adjustments as may have been necessary to the way the case was heard and to minimise any adverse effect on his health. I explained to the claimant and Mr Cooper that if he needed a break any time whilst giving evidence or otherwise he should ask for one and we would be happy to give him as much time as he needed. In the event, Mr Woodhouse only asked for one break whilst he was giving evidence, which we were happy to grant.

Hearing and findings of fact

9. We should say at the outset of these reasons that very few of the facts in this case were disputed. The claimant never disputed the fact or circumstances of a final written warning received on 20 March 2017 or the evidence gathered by Mr Walker concerning his whereabouts during working hours in a period between November 2017 and January 2018. On a large number of occasions when he was being cross examined, the claimant said he was unable to remember meetings or events. He invariably added, however, that he was not disputing the accuracy of documents such as meeting minutes or e-mail correspondence that set out what had happened. In considering the claimant's evidence, we bore in

mind his mental health issues and we found him credible. We also found the respondent's witnesses to be credible as their witness statements were detailed, specific and dealt with all the relevant matters that were within their knowledge. The issue in this case was not about who was telling the truth, but what interpretation should be given to a set of largely agreed facts.

10. The claimant served in the British armed forces between 1989 and 2013. There is no need to set out his many tours of duty or the matters that he witnessed during his service as these details were never challenged. We find that he was admitted to hospital towards the end of his service because of mental illness and left the military in 2013.

11. The claimant joined the respondent on 1 March 2013. We note the evidence of Mr Walker that when he began managing the team of which the claimant was a part, he (Mr Walker) was the only member of the team who wasn't from a military background.

12. The claimant had a contract of employment with the respondent to which a number of policies and procedures applied. The claimant accepted that he was subject to the disciplinary policy [47-49], the disciplinary procedure [50-52], the Parking at Home policy [63-80] and the Commercial Vehicle Driver's handbook [81-132]. The claimant was supplied with a company van to undertake his duties, which involved travelling to various sites and performing engineering work. The Parking at Home policy allows employees to drive home and park at home after the last job of the day and to drive to the first job of the next day in their vehicle. Any use of the company vehicle for anything other than work is prohibited. Any carrying of unauthorised passengers is prohibited. These conditions were put to the claimant in he accepted that he was subject to them.

13. The claimant also accepted that, unless work had taken him close to home and he had obtained permission from his line manager, he could not visit home during the working day. If he needed to use the toilet, for example, he would have to use one of the respondent's exchanges.

14. On 10 September 2014, the claimant and his then line manager, Mr Walker, had a conversation about the claimant not travelling home during the day [137]. On 1 October 2014, the claimant and Mr Walker had a further discussion about the same issue [136]. On 8 January 2015, the claimant's duties were reduced after he had been diagnosed with a heart condition. On 3 March 2016, the claimant had a period of forty-three days away from work with stress and anxiety [133].

15. Mr Walker was aware that the claimant was ex-military and had spent time in hospital with mental health issues. He was also aware that the claimant had issues at home in his personal life. The claimant's evidence was that his relationship with his wife had been difficult and he had spent some time living in the matrimonial home and also spent some time living with his mother. On 20 March 2017, the claimant was given a final written warning for gross misconduct for unauthorised use of the company vehicle and carrying unauthorised passengers. The circumstances were that the claimant had used the company van to take his son to nursery. One of the other parents at the nursery had

complained to the respondent at the claimant's use of the van and that the fact that the child was not in a child seat. The claimant disputed that aspect of the matter but accepts that he did take his son to nursery in a company vehicle, which was against company policy.

16. The claimant never appealed the decision. He never disputed the facts either at the time or before this tribunal. He never suggested that there was any reason or explanation for his actions other than that his wife and mother were both ill on the day in question and he therefore had to take the child to nursery.

17. Other than forty-three days taken in March and April 2016 for stress and anxiety, the claimant had no further absence for any issues that could be related to mental health before March 2016 or after the forty-three-day period, until 8 February 2018.

18. On 22 December 2017, Mr Walker was working on site. The claimant arrived in his company van and said he was going to use the toilet at his mother's house nearby. Mr Walker reminded the claimant what he'd previously told him about using the toilet in the exchanges and not to go home to do this. He told the claimant not to do it again. He had considered the matter closed. However, on 26 January 2018, the claimant rang Mr Walker to ask for another engineer to assist him on a job. This is usual. Mr Walker arranged for another engineer to go and assist the claimant, but by the time the colleague turned upon site, the claimant was not there. The colleague rang Mr Walker to advise him that the claimant wasn't on site and Mr Walker rang the claimant to find out what had happened. The claimant told him that he had forgotten his laptop, so had gone back home to collect it.

19. This second incident caused Mr Walker to reach the conclusion that something was not right. He had been clear with the claimant when he rejoined the team in 2017 of the importance of him not going 'off route' or wasting company time and had spoken to him about this again on 22 December 2017.

20. On 22 December 2017 and 26 January 2018, the claimant had given a cogent, if unacceptable, reason for his actions. He had not indicated any underlying or undisclosed reason for going off route to visit his mother's house or going off site when a colleague was on their way to assist. In his witness statement, the claimant said that the reasons he'd given for going off route on those two occasions were "the best I could think of at the time". He was evasive when I asked him if that meant he had lied to Mr Walker about the reason for going off route. He did not answer the question.

21. There is an agreement in place between the respondent and the CWU that the tracker records of employees can only be accessed where there is suspicion of a matter of discipline or adverse effect on the company's business. We find that Mr Walker had sufficient reason to access the claimant's records, given the history. He accessed the claimant's tracker records for a sample period between 24 November 2017 and 19 January 2018. In that sample of less than three months, Mr Walker found forty-two instances of the claimant going off route

(which effectively means that he was not in the right place to carry out his work). The forty-two instances were divided into four main areas:-

21.1 Times when the claimant was stopped outside his home.

21.2 Times when the claimant was stopped outside his mother's home.

21.3 Times when the claimant was stopped near his son's nursery.

21.4 Times when he appears to have spent excessive time at BT exchanges.

22. Mr Walker decided that the circumstances, when taken in the round, were sufficient to hold a fact-finding interview with the claimant. The tracker record was produced [188-222]. The claimant had a meeting with Mr Walker on 7 February 2018. He did not dispute the findings of the tracker report and could not explain his movements. He did not dispute the findings of the tracker records at this hearing in evidence, cross examination or in Mr Cooper's submissions.

23. Mr Cooper suggested that, given his knowledge of the claimant's mental health history, he should have not proceeded with a fact-finding interview without allowing the claimant to bring a colleague with him for support. We accept Mr Walker's explanation that there is no legal right to be accompanied at an investigatory interview and that he had anticipated the potential problem, and had arranged for the minutes of the meeting to be taken by a colleague of the claimant's with whom he got on with well, and who was also ex-military.

24. The claimant became upset at the end of the meeting on 7 February 2018 and signed off work on 8 February 2018. He never returned to work before his dismissal.

25. Mr Walker produced a comprehensive report [176-187] with supporting documents. The matter was delegated to David Tulip, who called a disciplinary hearing. An invitation letter was sent to the claimant on 27 February 2018 [227-229]. He was advised of his right to be accompanied and, in fact, was accompanied by a trade union representative at every subsequent meeting.

26. On 28 March 2018, the NHS service, Talking Changes, wrote to the claimant [229A-229B] to say that he was on the waiting list for talking therapy.

27. Through Mr Walker, the company arranged support through its EAP programme for the claimant [230]. In a keep-in-touch telephone conversation with the claimant, he told Mr Walker that the company had been brilliant.

28. On 15 April 2018, Doctor Ahmed and Doctor Linsley wrote to the claimant's GP [230A-230B]. The letter noted that the claimant thought that he had PTSD. He had said he had been released from the military because of dissociative symptoms, including driving to different locations, parking but having no recollection of the journey.

29. On 5 May 2018, the first occupational health report was produced. It stated that the claimant was not fit to work to attend a disciplinary meeting for five to six weeks and that on his return, his return to work should be phased.

30. Mr Walker spoke to the claimant on 29 May 2018 [234] and the claimant said that he was eager to return to work. Mr Walker spoke to the claimant again on 11 June 2018 [234] and the claimant said that he had been advised not to return to work by his union representative until he had had a second line manager review with Mr Tulip.

31. A second invitation to a disciplinary hearing was sent on 24 July 2018 [235-237] and a disciplinary hearing was conducted on 1 August 2018 by Mr Tulip. The claimant was accompanied by his union rep, Barry Jenkins. During the meeting, the claimant accepted that he had not told the company about medication he had been prescribed for his mental health [239C]. The claimant could offer no explanation for his actions in going off route, and it was submitted by his representative that his mental health condition had yet to be diagnosed [239N]. Mr Tulip considered the evidence before him and produced a dismissal letter and rationale dated 28 August 2018 [240-246]. We find that, given that the claimant had not alleged that the incidents on 22 December 2017 and 26 January 2018 had not been said to have been as a result of PTSD or dissociation; that he had given a cogent if unacceptable reason for his being off route on both occasions; there being no diagnosis of the claimant's mental health condition, and; there being no medical evidence suggesting that his conduct was due to any mental health condition, Mr Tulip's decision was reasonable in all the circumstances. It had been seven months since the two incidents had triggered the investigation; the claimant had been very well represented by his trade union throughout the period, and; there was evidence of two undisputed incidents when the claimant had been off route for reasons that were not suggested to be related to any mental health condition. He was already on a final written warning for a similar offence, so we find that dismissal was within the band of reasonable responses. It was never asserted that Mr Tulip did not have a genuine belief in the claimant's guilt; the decision was based upon reasonable grounds as are set out above, and; the respondent had undertaken a very thorough investigation and given the claimant every opportunity to raise medical evidence to support his position. The claimant appealed, but his appeal email was a single line and didn't seem to be based on anything other than a general feeling of unfairness. The claimant's appeal was referred to Mr Taggert, and on 7 September 2018, an invitation was sent to attend an appeal hearing [249-250].

32. The first appeal hearing took place on 26 September 2018 [251-263]. The claimant was asked why he was appealing and responded that his dismissal was unfair because he was suffering from a medical condition at the moment. The unfairness was the failure to take his illness into consideration [251]. The claimant did not mention that he had PTSD.

33. At the time of the meeting, the claimant had a letter from Talking Changes dated 3 August 2018 [266]. This letter thanked the claimant for attending an appointment with Talking Changes and said that he had "…presented with symptoms of depression, flashbacks, nightmares, hypervigilance and avoidance

in relation to traumatic experiences from the time he spent in the military. We will continue to assess and view your symptoms throughout treatment". The claimant mentioned the word "dissociation" for the first time in this meeting [254]. Mr Taggert was concerned enough by the claimant's letter to adjourn the hearing. The claimant received a second letter from Talking Changes dated 1 October 2018 [268], which noted that he'd been seen for CBT on 27 August 2018 and had presented with symptoms of "nightmares relating to his time in the forces, flashbacks, rumination, avoidance and dissociation. All these symptoms were indicative of Post-Traumatic Stress Disorder."

34. Both letters from Talking Changes were given to the respondent.

35. On 30 October 2018, a second appeal hearing was held [269-281]. At page 271, Mr Taggert asked the claimant to explain the link between PTSD and the disciplinary offences. The claimant's union representative tried to explain and gave a fairly lengthy and emotive explanation of what had happened. We cannot find any document that could be described as medical evidence that supports or corroborates what the union representative said. In the absence of any such medical evidence to support what was said, we can only assume that the trade union representative had either done some internet research or was relaying the thoughts of the claimant.

36. Mr Taggert was concerned that he did not fully understand the medical aspects of what the claimant was saying, so decided to ask the respondent's occupational health supplier seven questions about the claimant's health, including questions about the symptoms of dissociation and other matters. The claimant's case as presented to this tribunal is that because of dissociation, a symptom of PTSD, he can drive somewhere without realising what he has done. It is the key element of this case.

37. On 12 December 2018 the occupational health service wrote to the respondent [283-284] following a meeting with the claimant on 11 December 2018. The seven questions were not answered, but recommendations were given for adjustments on any future return to work. It was reported that the claimant had low mood and had given permission for the OHS to write to his GP.

38. There was then a series of chasing e-mails between the respondent's HR department, the respondent and the OHS for replies to the seven questions.

39. The claimant lodged his ET1 on 3 January 2019.

40. On 18 March 2019, OHS wrote to the respondent [296-299] following a telephone conversation with the claimant on 7 March 2019. It said that the claimant had reported dissociative symptoms for three months in 2017 – the period under investigation [297]. The seven questions were at least partially answered, but on the question of whether dissociation is linked to any particular activity or location of work, the OHS was unable to confirm diagnosis without further medical information from the claimant's treating doctors and stated that it would be helpful to have further medical information regarding any reasons or symptoms for which a diagnosis of dissociation may have been given. We find that at that point, there

was no confirmation of a formal medical diagnosis of PTSD and no link between dissociative behaviour and the new disciplinary matters. The OHS suggested a new GP report [299] and the claimant gave his consent. On 17 April 2019, OHS wrote to the respondent [303-304] with the rather surprising information that the claimant's GP felt unable to help with the matter. The letter also advised BT that the report from the claimant's treating mental health team had not been received.

41. On 25 May 2019, there was a further letter from OHS [307-308] confirming receipt of a specialist report dated 30 May 2019. The report stated that the claimant had gone through a period where he had no recollection of his past in 2017 while he was working with BT. The report stated that dissociation in PTSD in a minority of patients can be delayed by months of years. In around a third of people, their symptoms are long-lasting and can be severe and enduring. We find that these are generic conclusions that do not specifically say that the claimant had the symptoms of dissociation at the relevant time or that they had caused his actions that led to the disciplinary matters.

42. The seven questions had still not been fully answered, so the respondent chased again on 7 June 2019 [313] and received the final OHS letter dated 24 June 2019 [315-317]. In respect of the issue of dissociation and how it impacted on the claimant, the OHS letter said:-

> "In regard to dissociation, Mr Woodhouse informed Dr Cashman during the telephone consultation on 7 March 2019 that he was, and I quote, "….unaware that he was doing this". He was unable to recollect any detail as to describe the episode. He found himself in locations without knowing why he was there. Understanding these episodes appear to have been limited to his work situation from the account he gave as far as he was aware. These went on for three months in 2017. I understand during the period of the investigation, these did not recur."

43. We also find these conclusions to be generic and that they do not link a diagnosis of PTSD or dissociation with the disciplinary matters alleged.

44. Mr Taggert decided to finalise his appeal, which was a complete re-hearing, and produced a letter confirming the original decision of dismissal on 12 September 2019 [317E] and a very thorough rationale for his decision at pages 317F to 317Q. At page 317G, Mr Taggert says:-

> "Another reason I believed medical information was critical was because there were two possible outcomes. If I decided to overturn the decision to dismiss I needed to understand what work Mark was fit to conduct. My desire was to address all possible outcomes and at the same time to prevent Mark needing to go through additional OHS consultations to understand what work could be undertaken. Mark's mitigation described as stating he did not know what he was doing and that he was not conscious to his surroundings which were concerning as to Mark's role, a customer service engineer requires driving and critical safety activities such as climbing telegraph poles in a lone worker environment. Throughout the aforementioned period, I have

spoken to Mark and his union representatives Peter Sharrocks and Barry Jenkins. Both Peter and Barry have kept me informed with how Mark is and any developments I need to be aware of. The above provided excellent support to Mark throughout this and I was confident that the contact strategy they had in place would allow me to be made aware of any developments with Mark's health and wellbeing. Rather than directly contacting Mark and inducing any un-needed stress there have been periods I have worked closely with both Peter and Barry throughout. Through this contact strategy I was made aware of two different instances in which Mark was potentially in dangerous situations. In both instances I worked with our HR team, WISH team and EAP team to see if there was anything that could have been done to support.

The second point I would like to raise is that I do not question whether Mark has a mental health issue. I've made this point clear to Mark and his union representation from the outset of my involvement of the case. However, having mental health issues is not by default an explanation nor mitigation for misconduct and not following acknowledged company job standard, expectations and policies. All employees are expected to comply with these expectations, even those individuals with mental or physical health issues. The company's responsibility is to act in a fair manner accommodating adjustments to roles where required where the business is capable of doing so and not treating people unfairly because of their condition."

45. He went on to decide that the incidents on 22 December 2017 and 26 January 2018 had been given coherent albeit unacceptable explanations of the claimant's actions, which had prompted Mr Walker to begin the fact find.

46. Mr Taggert gave a lengthy explanation of his investigation into the claimant's mental health issues and to the final OHS report at 24 June 2019 that concluded that the symptoms described by the claimant were unusual. Mr Taggert had then approached Dr Diane McCawley, BT's internal medical professional, who had agreed that the symptoms put forward by the claimant were unusual and did not follow the normal pattern that she would have expected to see in a case of PTSD. In particular, Dr McCawley found it unlikely that the incidences would be limited to work or that there would be such a consistent pattern to where the claimant had been off route. She explained that the OHS advice was somewhat vague and did not give a firm view on the claimant's health, which was likely to be because there was no actual medical evidence from which the doctor could base their opinion. The GP had said that they were unable to assist, suggesting that the claimant did not have a detailed medical history which documented and proved his condition and its impact. All they had to go on was the claimant's representations about the symptoms he had experienced historically – which they felt did not add up. In any event, Dr McCawley stated that a mental health condition does not absolve the claimant's responsibilities for his actions if they are not linked.

47. We find that Mr Taggert undertook a thorough and detailed investigation of the claimant's case, including numerous consultations with occupational health services. We appreciate that Mr Taggert has no medical qualifications and is therefore entirely dependent upon the medical advice he received. We have not seen any of the claimant's GP records and his GP felt unable to assist the respondent in assessing the claimant's condition. We are somewhat critical of the occupational health supplier for its seeming inability to respond to appropriate medical questions raised, but we find that at no stage during the investigation, the disciplinary process or the appeal process had the claimant produced compelling medical evidence that gave a formal medical diagnosis of PTSD and formal diagnosis of dissociation as a symptom of PTSD. All the respondent had was a number of assertions made by the claimant which did not appear to be supported by the medical evidence from the OHS or any other medical professional.

48. In the letter dated 18 October 2019 from Doctor Linsley that was produced on the first morning of the hearing is a comment that the claimant has ongoing symptoms of depression and PTSD. It also says that he has continued to experience suicidal ideas and dissociative episodes. Mr Cooper was unable to give any reasonable explanation as to why this letter had not been produced before the first day of the hearing. However, it was admitted as evidence and does contain a formal diagnosis.

<u>Applying the facts to the law and issues</u>

49. Given that we have a letter from the claimant's psychiatric consultant saying that he has a history of PTSD and dissociative episodes, we have to find that he was a disabled person within the meaning of section 6 of the EqA.

50. However, we find that on the facts presented at the time of the disciplinary offences, investigation, disciplinary process and appeal process, there was not enough medical information available to the respondent that meant that it could be said to have known that the claimant was a disabled person or that it should have known he was a disabled person. Much of the information that was being presented from the claimant and by OHS was generic, not specific to the claimant and made no formal diagnosis. We therefore find that his claim of discrimination arising from disability fails at that point. However, in the alternative, had we found that the respondent knew or should have known that the claimant was a disabled person at all material times, we would not have found in his favour on the section 15 claim. The reason that we would not have found in his favour is that he had given a cogent if acceptable reason for the incidents on 22 December 2017 and 26 January 2018 and had never sought to say that there was anything else that had caused his behaviours. He was given the opportunity to explain why he had said what he had said in his witness statement when I asked him the question and he declined to say that he had lied to Mr Walker and/or his behaviours had been due to dissociative symptoms of PTSD. He was on a final written warning for a matter that he had not said was related to PTSD or dissociative symptoms of that illness and therefore we would have found that the dismissal (which is the something in consequence) was not related to the claimant's disability.

51. On the issue of unfair dismissal, we find that the respondent had a genuine belief in the claimant's guilt. That belief was clearly based on reasonable grounds given that the respondent did not dispute the facts at the time and has not disputed them subsequently, and we find that there was a reasonable investigation. We would, in fact, give the respondent considerable credit for the effort they had put in to investigating the claimant's position and their general treatment of him whilst he was absent between February 2019 and September 2019 due to his ill-health.

52. The decision to dismiss was reasonable in all the circumstances and in equity and was within a band of reasonable responses. The claimant's dismissal was fair. His claim for unfair dismissal is dismissed.

EMPLOYMENT JUDGE SHORE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
18 December 2019