



EMPLOYMENT TRIBUNALS

Claimant: Ms Jessica Anderson

Respondent: CAE Crewing Services Ltd

Heard at: London South

On: and 19-20 April 2021 in chambers

Before: Employment Judge Martin
Ms Batchelor
Mr Hutchings

Representation

Claimant: Mr Powsland - Counsel

Respondent: Ms Platt - Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant's claims are not well founded and are dismissed.

REASONS

1. By a claim form presented to the Tribunal on 20 June 2019 the Claimant made claims of direct discrimination on grounds of disability, discrimination arising from disability and harassment. This followed a period of early conciliation between 19 March 2019 and 14 April 2019 when the certificate was issued. All claims were defended by the Respondent in its response presented on 24 September 2019. The disability relied on by the Claimant is bi-polar. The Claimant was still employed by the Respondent when she presented her claim but has now given her notice to terminate her employment. By the time of the hearing the Claimant had withdrawn her claims for reasonable adjustments and indirect discrimination. She

withdrew further allegations during the hearing as set out in the issues below.

2. The Claimant had presented three claims. Two in London South and one in Watford. At the start of the hearing, she confirmed that this was because of a mix up and she only intended to bring one. She confirmed that the agreed list of issues encapsulated all her claims.
3. The Tribunal had before it an agreed bundle of documents (both in hard copy and electronically, the witness statements, and a chronology prepared by the Respondent.
4. The Tribunal heard from the Claimant on her own behalf, and for the Respondent from: Dr Chris King (Head of Aeromedical Centre and Medical Director at Centreline Aviation Medical Services Ltd), Dr Christopher Watts (Occupational Physician and accredited Aviation Medical examiner (AME), Ms Allison Doran (Crew Manager), Ms Marta Ciudad (HR Business Partner), and Ms Sandra Murphy (HR Business Partner). Submissions were given at the end of the hearing with the Respondent providing written submissions. Dr Watts and Ms Ciudad gave their evidence by CVP, all other participants were at the tribunal.
5. The evidence was heard over three days and the Tribunal spent two days in chambers. Although the hearing was listed for four days, only three days were available and therefore it was agreed that this hearing would only consider liability. Unfortunately, due to the ill health of the Judge and restrictions caused by the Covid-19 pandemic the in chambers meeting was delayed. The Tribunal apologises for the delay which was outside its control.

The agreed issues

1. The Claimant is disabled pursuant to s.6 Equality Act 2010.
2. Did the Respondent have knowledge of the Claimant's disability at the time of the alleged discriminatory treatment?
3. If so, did the Respondent unlawfully discriminate against her as set out below?
4. Does the Respondent have vicarious liability for the acts of any of the AMEs who assessed or re-assessed the Claimant's fitness to fly pursuant to s.109 Equality Act 2010?
5. If so, did the Respondent take all reasonable steps to prevent the AMEs acting unlawfully?

Direct discrimination pursuant to s.13 Equality Act 2010

6. Did the Respondent miscategorise the Claimant's bi-polar disorder in January 2019 as a psychotic disorder? If so, in so doing, did the Respondent treat the Claimant less favourably than it treated, or would have treated, a colleague who did not have bi-polar disorder?
7. Was the Respondent's requirement that the Claimant undergo a psychiatric assessment in December 2018, and again in March 2019, less favourable treatment than that which either was, or would have been afforded to a colleague who did not have bi-polar disorder?

Discrimination pursuant to s.15 Equality Act

8. Further or in the alternative, did the Respondent treat the Claimant unfavourably because of something arising in consequence of her disability when it:
 - ~~i. required her to pay for the AME assessment on 27 December 2018¹;~~
 - ii. failed to investigate her complaint that Dr Watts had miscategorised her bipolar disorder as a delusional disorder;
 - iii. failed to provide her with the guidelines relied upon by Dr Watts when he thus categorised her condition;
 - ~~iv. failed to disclose Dr Watts's report or his notes of the assessment;²~~
 - v. required her to undergo a psychiatric assessment in January 2019 and March 2019 notwithstanding that the Second AME had assessed her as fit to fly on 17 January 2019, as had her GP on 18 February 2019;
 - vi. paid her only basic pay from December 2018 to date; and
 - ~~vii. refused to postpone the hearing of her grievance dated [] pending receipt of an updated report from her GP.³~~
9. If the Respondent unlawfully discriminated against the Claimant contrary to s.15 Equality Act, was that discrimination a proportionate means of achieving a legitimate aim?

Harassment - s26 Equality Act 2010

10. Did the Respondent engage in unwanted conduct related to the Claimant's disability, which had the purpose or effect of violating the Claimant's dignity or

¹ Withdrawn in submissions.

² Withdrawn in submissions.

³ Withdrawn in submissions.

creating an intimidating, hostile, degrading, humiliating or offensive environment for her, as follows?

10.1 Dr Watts' email to the Claimant dated 10 January 2019 describing her bi-polar disorder as a "delusional disorder", and "fobbing her off" thereafter when she sought to ask him to reconsider that categorisation;

10.2 His suggestion during the assessment on 27 December 2019 that her bi-polar disorder posed a threat to security;

10.3 Effectively forcing her to disclose the precise nature of her condition (i.e., bi-polar disorder) to her employer following the assessment on 27 December 2018;

10.4 Threatening her with dismissal if she did not submit to further testing which she considered to be discriminatory in the appeal outcome of 20 March 2019;

2.5. Was it reasonable for the conduct complained of to have had the purpose or effect alleged by the Claimant?

The statutory provisions and the law

6. 136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

7. The provisions of section 136 of course apply to any proceedings under the Act, and not only to claims of direct discrimination.

8. S13 Equality Act 2020 - Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

9. In considering the claim of direct discrimination, the first task of the Tribunal is to decide whether on the primary facts as proved by the Claimant, and any appropriate inferences which can be drawn, there is sufficient evidence from which the Tribunal could (but not necessarily

would) reasonably conclude that there had been unlawful discrimination. If the Claimant can prove such facts, then the burden of proof passes to the Respondent to show that what occurred to the Claimant was not to any extent because of the relevant protected characteristic as set out in the Equality Act 2010. In each case, the matter is to be determined on a balance of probabilities. The fact that a claimant has a protected characteristic and that there has been a difference in treatment by comparison with another person who does not have that characteristic will not necessarily be sufficient to establish unlawful discrimination. In all cases the task of the Tribunal is to ascertain the reasons for the treatment in question and whether it was because of the protected characteristic.

10. Harassment

a. Section 26 of the EqA provides:

- (1) A person (A) harasses another (B) if—
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. . .
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
 - (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.
- (5) The relevant protected characteristics are - . . . disability”

b. A Tribunal should consider all the acts together in determining whether or not they might properly be regarded as harassment (Driskel –v- Peninsular Business Services Ltd [2000] IRLR 151, EAT and Reed and Bull Information Systems Ltd –v- Stedman [1999] IRLR 299, EAT).

c. The motive or intention on behalf of the alleged harasser is irrelevant (see Driskel above).

- d. The Court of Appeal confirmed in *Land Registry –v- Grant (Equality and Human Rights Commission intervening)* [2011] ICR 1390 “when assessing the effect of a remark, the context in which it is given is always highly material”.
- e. In *Richmond Pharmacology –v- Dhaliwal* [2009] ICR 724 the EAT held that the Claimant must have felt or perceived his or her dignity to have been violated. The fact that a Claimant is slightly upset or mildly offended is not enough.

Discrimination arising from disability s15

11. Section 15 of the EqA provides:

“(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.”

12. It therefore needs to be established whether there was a causal connection between the unfavourable treatment and the disability. If there is the burden shifts to the employer to establish justification i.e., a proportionate means of meeting a legitimate aim.
13. This type of discrimination occurs not because the person has a disability, but because of something connected with the disability. It can only occur if the employer knows, or could reasonably be expected to know, that the person is disabled.

The facts that the Tribunal found

14. The Tribunal has found the following facts on the balance of probability having heard the evidence and considered the documents referred to. The following findings are confined to those facts that are relevant to the issues and necessary to explain the decision reached. Even if not specifically referred to, all evidence was considered by the Tribunal.

Background

15. The Respondent supplies cabin crew and other flying related matters to airlines. The Claimant joined the Respondent on a fixed term contract on 29 January 2019. The Claimant accepted that the role of cabin crew is a unique one in terms of the safety requirements for herself, colleagues, and passengers. Cabin crew are trained to deal with emergencies including medical emergencies, terrorism, aircraft failure including water landings and crashes, hostage situation and passengers who become drunk or violent.

16. The Claimant has experience as cabin crew having previously worked for Easy Jet and British Airways. She is familiar with the requirement for a medical assessment by an Aviation Medical Examiner ("AME").
17. All crew must have a Fit to Fly certificate (FTFC). This involves an assessment by an AME. A FTFC last for five years after which it needs to be renewed. If there is a change of circumstance, then a further assessment is required and a new FTFC issued.
18. AME's are doctors who have been approved by the Civil Aviation Authority to carry out fit to fly (FTF) assessments and issue FTFC's. There is a register of doctors who are approved.
19. Dr Watts and Dr King are the two AME's who the Respondent referred the Claimant to. She made her own arrangements to see Dr Rowley who is also on the list of approved AME's. AME's are independent of the Respondent and the CAA, and the assessments are covered by statute and CAA rules.
20. When the Claimant joined the Respondent, she had a FTFC from 2017. A further FTFC was not required. The Respondent did not know anything about the Claimant's medical history when she started working for it. In June 2018 the Claimant disclosed that she had a heart condition and that her Cardiologist wanted her to take some new medication. She took some time off work in June 2018 to see how the medication affected her.
21. On 22 November 2018, the Claimant was off work sick for three days suffering with palpitations or a cardiac episode. She said she thought she was having a heart attack. The Claimant was admitted to hospital overnight and diagnosed with Costochondritis (inflammation of the cartilage that joins the ribs to the sternum). As this was a change in the Claimant's medical history an examination by an AME was required to certify the Claimant as fit to fly.
22. On 27 November 2018 the Claimant was seen by Dr Cosmo Hallstrom an Adult Psychiatrist who prepared a report for a case that the Claimant was bringing against British Airways (the hearing took place on 13-14 December 2018). This noted that the Claimant was currently well. The report is detailed and goes into the Claimant's medical history. The Respondent was unaware of this report.
23. Ms Doran arranged for an appointment with Dr Watts on 7 December 2018, however due to a mix up the Claimant did not attend. A further appointment was therefore arranged for 27 December 2017.
24. As is normal practice, Dr Watts was instructed to do an assessment. A form was completed by the Claimant in which she disclosed her bi-polar diagnosis. Dr Watts did not consider he was qualified to assess the

Claimant in relation to her bi-polar condition and therefore needed her to attend an appointment with a psychiatrist for a report, after which he would consider if she was FTF. He also requested copies of her medical notes. She did not disclose the psychiatrists report which had been prepared for her case against British Airways which noted that she was well at the time it was prepared.

25. The Claimant had a conversation with Ms Doran after the assessment with Dr Watts to tell her that she had not been issued a FTF and that Dr Watts wanted her to be examined by a psychiatrist for a mental health condition. It was not clear from the evidence whether the Claimant disclosed to Ms Doran she had bi-polar at that time. However, having read the correspondence in the bundle, and in particular the emails between the Claimant and Ms Doran the Tribunal finds on the balance of probabilities that Ms Doran was told that the Claimant had bi-polar. The Claimant subsequently gave consent for her medical condition to be disclosed to the Respondent by email dated 3 January 2019.
26. Initially the Claimant said she would go to see the psychiatrist. Immediately after her appointment with Dr Watts she sent an email to Ms Doran giving consent for it to take place as soon as possible. She later changed her mind. The Claimant had a letter from her GP which, in her view, should have satisfied Dr Watts. On 9 July 2019 Ms Doran wrote to Dr Watts on the Claimant's behalf asking if he could accept the GP report as satisfactory evidence of the Claimant's fitness to fly so that she could return to work. He did not consider it did satisfy him and still required the referral to a psychiatrist. The Claimant complained that the decision by Dr Watts to ask for a psychiatric report was discriminatory.
27. The Claimant corresponded with Dr Watts expressing her dissatisfaction. She complained that Dr Watts had categorised her condition as a delusional disorder. She asked the Respondent to arrange for her to be seen by another AME.
28. The Claimant decided to engage her own choice of AME to conduct an assessment and went to see Dr Rowley. Dr Rowley did not give evidence to the Tribunal. Dr Rowley provided a FTFC. The Claimant provided this to the Respondent on 17 January 2019 saying she was cleared to fly. There was no other document provided to either the Respondent at the time or the Tribunal at this hearing, for example the questionnaire which the Claimant would have completed prior to her examination by Dr Rowley. Dr Rowley was not engaged by the Respondent and the Respondent was unaware of what information she had provided to Dr Rowley and why he had a differing opinion to Dr Watts. The Respondent submitted that anything before 18 January 2019 was out of time.
29. The Respondent was therefore faced with two AME's giving different opinions. One saying he was not prepared to issue a FTFC without further examination by a specialist and the other not requiring any further

examination and issuing the FTFC. Ms Doran consulted with HR, and it was decided that the Respondent should commission a third AME to consider whether the Claimant was FTF as requested by the Claimant.

30. On 21 January 2019 the Claimant raised a grievance complaining about her continued absence from work and of discrimination. The grievance was heard on 20 February 2019 with the outcome being given to the Claimant on 27 February 2019. Her grievance was not upheld. She appealed on 3 March 2019 with the outcome being given on 14 April 2019.
31. The Claimant was examined by Dr King on 27 February 2019. Dr King is an AME on the register. He is not associated either Dr Watts or Dr Rowley or their practices. He had not done work for the Respondent prior to seeing the Claimant. Dr King said that the Claimant was reluctant to undertake further assessments and consequently, he could not do a medical examination in relation to her heart condition. She again disclosed she had bi-polar and Dr King, like Dr Watts, wanted to refer the Claimant for a psychiatric examination. His intention was that if the psychiatrist report indicated the Claimant could fly he would then do the other assessments given how resistant the Claimant was in his meeting with her. before examining her due to her reluctance to be examined by him.
32. The Claimant was unhappy with Dr King and emailed Ms Doran following her appointment with him to complain that he had discriminated against her. She followed this up with a further email on 8 March 2019 in which she said *"Thank you for the update. I can't imagine the report will help much, as he never carried out the medical. He spent the time I was there prattling on about how much of a risk I was because of Germanwings. I can assure you I'd never portrayed any ideology to crash an aircraft. His concerns were baseless and unfounded. This is an awful discriminatory attitude, which I've now been subjected to by two of the company approved doctors. I'm struggling to see any way forward if the EASA medical I obtained is still unacceptable. I'll be meeting with Claire Buckley soon, date to be confirmed"*.
33. Notwithstanding this, the Claimant agreed to see a psychiatrist and went to see Dr Sheetal Sirohi on 22 May 2019. The psychiatric report was dated 26 June 2019. The report was sent to Dr Watts as he had already examined the Claimant in relation to her heart condition. Dr Watts reviewed this report and considered the Claimant fit to fly and a FTFC was issued on 4 July 2019.
34. During the Claimant's absence from work, she asked if there was any ground crew work available for her but was told that there was not. The Respondent provides crew to other airlines and was told by them that there were no vacancies. Normally when a member of cabin crew is grounded pending a FTFC they are not paid (or only paid SSP as appropriate), however the Respondent exercised its discretion and paid the Claimant her basic pay throughout her period of absence. Cabin crew receive a supplement when flying. This was not paid to the Claimant as she was grounded.

35. Turning to the remaining issues in this case the Tribunal has found the following on the balance of probabilities.

Did the Respondent have knowledge of the Claimant's disability at the time of the alleged discriminatory treatment?

36. The Tribunal has made findings above and find that it is more than likely that Ms Doran and the Respondent was aware of her bi-polar diagnosis on in January 2019.

If so, did the Respondent unlawfully discriminate against her as set out below?

Does the Respondent have vicarious liability for the acts of any of the AMEs who assessed or re-assessed the Claimant's fitness to fly pursuant to s.109 Equality Act 2010?

37. The Claimant accepts that Dr Watts and Dr King were not employed by the Respondent. The question therefore is whether these two doctors were agents of the Respondent. If they are agents, then the Respondent will be vicariously liable for any acts of discrimination by them.

38. The Claimant's case is that despite them not being employees, Dr Watts was acting as an agent of the Respondent given the extent to which the Respondent was keen to justify and to uphold his opinion. The Claimant sought to distinguish the Barclays case (see below) as this was not just about Dr Watt's actions, but the way the Respondent adopted them. It was submitted that this was not just about a one-off action of Dr Watts which the Claimant accepts based on the Barclays case could not found liability against the Respondent.

39. The Claimant's position is that the Respondent did not disclaim the act and seek to assist the Claimant but constantly sought to uphold his opinion and failed to investigate his harassing and discriminatory acts. It was submitted that the Respondent repeatedly said the Claimant could not fly relying on Dr Rowley's certificate, and this was because of the negative outcome from Dr Watts meaning that the Claimant was subjected to his opinion, even though she said the behaviour was harassing and discriminatory. Nothing was specifically said about Dr King in the Claimant's submissions.

40. The Respondent submitted that the general rule is that where someone is engaged as an independent contractor on a contract for services that no liability arises for the negligence or other torts committed by that independent contractor on the execution of the work for which they were engaged. The Respondent referred to **Barclays Bank Plc v Various Claimants [2020] UKSC 13** which affirmed the principle in **D&F Estates Ltd, v Church Commissioners for England [1989] AC 177**.

41. The Respondent submitted that Dr Watts was not an agent but a self-employed consultant for Heathrow Medical Services. The Respondent had used this organisation for about 18 assessments since its operations began in 2018. The relationship was not exclusive or particularly close. The only AME work done by Dr Watts for the Respondent was regarding the Claimant. The Respondent had no input into Dr Watts opinion or decision save to ask for clarification and to ask if the Claimant's GP letter would suffice.
42. The Tribunal finds that Dr Watts (and Dr King) were both independent contractors engaged to provide a specific service, namely assessments for FTFC's. The Tribunal does not find that there was any agency involved which would render the Respondent liable for any discriminatory acts of Dr Watts or Dr King.
43. The decision in the Barclays case is that *"a person would be vicariously liable for the wrongful acts of someone who was not their employee if the relationship between them was sufficiently akin or analogous to employment to make it fair, just and reasonable to impose such liability, but such liability would not arise if the person who had committed the wrongdoing had been carrying on business on his own account."*
44. In this case, there is nothing akin to an employment relationship. Dr Watts and Dr King were independent doctors with a portfolio of clients and patients. The Claimant's suggestion that the Respondent constantly sought to uphold Dr Watt's decision is on the evidence wrong. The evidence was that Ms Doran contacted Dr Watts to try to persuade him to accept the Claimant's GP letter rather than have to have a psychiatric report. The evidence was that the Respondent were supporting the Claimant and wanted her to be able to return to work. The Tribunal conclude that it was not for the Respondent to investigate Dr Watts. If the Claimant wanted an investigation or wanted to challenge Dr Watts' decision, she could have contacted the CAA. She could also have complained to the British Medical Association. She did neither.
45. The Tribunal does not find that the Respondent is liable for any acts of discrimination that may have been done by either Dr Watts or Dr King.

If so, did the Respondent take all reasonable steps to prevent the AMEs acting unlawfully?

46. Given the finding above, the Tribunal has not considered this.

Direct discrimination pursuant to s.13 Equality Act 2010

Did the Respondent miscategorise the Claimant's bi-polar disorder in January 2019 as a psychotic disorder? If so, in so doing, did the Respondent treat the Claimant less favourably than it treated, or would have treated, a colleague who did not have bi-polar disorder?

47. The Tribunal has found that the Respondent is not liable for the acts of Dr Watts. [set out the delusional point as facts]. However, if the Tribunal had found differently the following would apply. The Tribunal found the following facts in relation to this issue.
48. The Claimant alleges that Dr Watts categorised her condition as delusional (as opposed to psychotic as set out in the list of issues). This refers to the communication by email from Dr Watts dated [] in which he said []. The Tribunal notes that the words “delusional” are in quotes. Expand on this. []. The less favourable treatment complained of is the categorising of her bi-polar disorder as delusional.

Was the Respondent's requirement that the Claimant undergo a psychiatric assessment in December 2018, and again in March 2019, less favourable treatment than that which either was, or would have been afforded to a colleague who did not have bi-polar disorder?

49. The requirement that the Claimant undergo a psychiatric assessment was not a requirement of the Respondent on the facts. This was a requirement of Dr Watts and Dr King. Even if the Respondent were liable for the acts of Dr Watts and Dr King this would not be less favourable treatment to what was or would have been afforded to a colleague without bi-polar. The AME's are akin to a GP. Like a GP they will refer patients to an expert where there is a condition that they do not have sufficient knowledge about. It could be for any mental health condition for example schizophrenia, or a physical condition. In the case of a head injury, they may require a specialised neurological examination with scans. Their role is to ensure that all cabin crew and pilots are fit to fly in accordance with CAA requirements. If the AME requires further information about any condition the evidence was that it would be asked for before the individual was certified fit to fly. Even had the Respondent been vicariously liable for the acts of Dr Watts and Dr King, the Claimant's claim would f

Discrimination pursuant to s.15 Equality Act

Further or in the alternative, did the Respondent treat the Claimant unfavourably because of something arising in consequence of her disability when it:

- ~~i. required her to pay for the AME assessment on 27 December 2018;~~⁴***
- ii. failed to investigate her complaint that Dr Watts had miscategorised her bipolar disorder as a delusional disorder;***
- iii. failed to provide her with the guidelines relied upon by Dr Watts when he thus categorised her condition;***

⁴ Withdrawn by the Claimant during submissions

- iv. *failed to disclose Dr Watts's report or his notes of the assessment;*
- v. *required her to undergo a psychiatric assessment in January 2019 and March 2019 notwithstanding that the Second AME had assessed her as fit to fly on 17 January 2019, as had her GP on 18 February 2019;*
- vi. *paid her only basic pay from December 2018 to date; and*
- vii. ~~*refused to postpone the hearing of her grievance dated [] pending receipt of an updated report from her GP.*~~

If the Respondent unlawfully discriminated against the Claimant contrary to s.15 Equality Act, was that discrimination a proportionate means of achieving a legitimate aim?

50. The Tribunal has found that the Respondent is not vicariously liable for any acts of Dr King and Dr Watts. Therefore, it did not discriminate against the Claimant in respect of items ii – v above. In relation to pay. The Tribunal heard that the Claimant was treated more favourably than other cabin crew who for whatever reason are not fit to fly in that she was paid basic pay throughout. This was the first time the Respondent had paid basic pay in such circumstances.

Harassment - s26 Equality Act 2010

51. Did the Respondent engage in unwanted conduct related to the Claimant's disability, which had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, as follows?
- a. ~~Dr Watts' email to the Claimant dated 10 January 2019 describing her bi-polar disorder as a "delusional disorder", and "fobbing her off" thereafter when she sought to ask him to reconsider that categorisation;⁵~~
 - b. ~~His suggestion during the assessment on 27 December 2019 that her bi-polar disorder posed a threat to security;⁶~~
 - c. Effectively forcing her to disclose the precise nature of her condition (i.e., bi-polar disorder) to her employer following the assessment on 27 December 2018;

⁵ Withdrawn by the Claimant during submissions

⁶ Withdrawn by the Claimant during submissions

- d. Threatening her with dismissal if she did not submit to further testing which she considered to be discriminatory in the appeal outcome of 20 March 2019;
 - e. Was it reasonable for the conduct complained of to have had the purpose or effect alleged by the Claimant?
52. The Tribunal finds that the Respondent, when faced with two differing opinions from Dr Watts and Dr Rowley acted reasonably by requesting that the Claimant went to see Dr King for a third assessment. It has responsibilities to its customers, colleagues, and the flying public and must be satisfied that staff are fit to fly. Indeed, the Claimant asked for a second opinion before going to see Dr Rowley on her own volition.
53. The Tribunal understands that a psychiatric assessment would be difficult for the Claimant given her medical history. However, it maybe could have been avoided if she had disclosed the psychiatric report she had commissioned in relation to her litigation against British Airways as this is a comprehensive report and says she was well at the time. The report was finalised just before she went to see Dr Watts.
54. Had the Claimant gone to see the psychiatrist after her assessment by Dr Watts as she had originally said she would, then she would have resolved the issue straight away. Dr Watts was obviously satisfied with the report when it was received from the psychiatrist as he certified the Claimant as fit to fly immediately.
55. The Tribunal does not find that the Respondent engaged in unwanted conduct related to the Claimant's disability, which had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The reasons for its action was to ensure that she was safe to fly.
56. In all the circumstances the Claimant's claims are dismissed.

Employment Judge Martin
Date: 1 June 2021