



EMPLOYMENT TRIBUNALS

Claimant: Ms S Sharpe
Respondent: Promotion Line Ltd
Heard at: East London Hearing Centre (by Cloud Video Platform)
On: 5 August 2021
Before: Employment Judge Burgher
Members: Mr T Burrows
Ms S Jeary

Appearances

For the Claimant: In person
For the Respondent: Mr M Sellwood (Counsel)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT

1. The Claimant's claim for unfair dismissal fails and is dismissed.
2. The Claimant's claims for disability discrimination under the Equality Act 2010 fail and are dismissed.
3. If following a review by the Respondent of its accounts the sum of £24.62 is outstanding in respect of holiday pay, the Respondent is ordered to pay the Claimant that sum

REASONS

Issues

1. At the outset of the hearing the issues were confirmed for determination by the Tribunal.

Unfair dismissal

- 1.1 What was the reason or principal reason for the Claimant's dismissal? The Respondent says the reason was redundancy or some other substantial reason, namely the Claimant's refusal to accept short-time working in circumstances where others had agreed to it.
- 1.2 If the reason was redundancy or some other substantial reason, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Claimant argues the dismissal was unfair for the following reasons:
 - 1.2.1 No process was followed;
 - 1.2.2 No meeting or individual consultation was offered;
 - 1.2.3 She was not made aware of any objective selection criteria used to select her for redundancy;
 - 1.2.4 A selection pool of employees carrying out a role with interchangeable skills, was not created;
 - 1.2.5 She was not given adequate warning of what was happening;
 - 1.2.6 She was not offered a chance to make reasonable input into the decision;
 - 1.2.7 The process used for previous redundancies was 'last in/first out';
 - 1.2.8 The Respondent ought to have exhausted all other measures of saving costs;
 - 1.2.9 No alternatives to redundancy were discussed with her or considered;
 - 1.2.10 No offer was made to appeal the redundancy decision;
 - 1.2.11 The remaining employees at the Respondent had either been allowed to work from home taking the Respondent's computers home, or placed on furlough leave via the Coronavirus Job Retention Scheme;
 - 1.2.12 On Tuesday 17 March 2020 news announced that 'help was coming' in the form of a Government grant to cover 75% of staff wages;
 - 1.2.13 On 20 March 2020 at 5pm the CJRS scheme was announced, and even back-dated to 1 March 2020, to allow employees who had already been made redundant to be included on the furlough scheme. It was never offered to her as an alternative to redundancy.

Disability

2. Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

- 2.1 Did she have a physical impairment: chronic asthma? The Respondent concedes that the Claimant was disabled by reason of chronic asthma at the relevant time.
- 2.2 Was the Respondent aware that the Claimant was a disabled person at the relevant time?

Indirect discrimination (Equality Act 2010 section 19)

3. Did the Respondent have the following provision, criterion or practices "PCP":
 - 3.1 not allowing staff to work from home unless they had a company laptop;
 - 3.2 not allowing staff to take company computer equipment home in order to work from home;
 - 3.3 Did the Respondent apply the PCP to the Claimant?
 - 3.4 Did the Respondent apply the PCP to persons without the Claimant's disability or would it have done so?
 - 3.5 Did the PCP put persons with the Claimant's disability at a particular disadvantage when compared with persons without the Claimant's disability, in that they would be
 - 3.5.1 put at additional physical risk if unable to shield during the pandemic; and
 - 3.5.2 caused to suffer comparatively greater stress and anxiety?
 - 3.6 Did the PCP put the Claimant at that disadvantage?
 - 3.7 Was the PCP a proportionate means of achieving a legitimate aim?
 - 3.8 The Tribunal will decide in particular:
 - 3.8.1 was the PCP an appropriate and reasonably necessary way to achieve those aims;
 - 3.8.2 could something less discriminatory have been done instead;
 - 3.8.3 how should the needs of the Claimant and the Respondent be balanced?

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

4. Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?
 - 4.1 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCP:
 - 4.1.1 not allowing staff to work from home unless they had a company laptop;
 - 4.1.2 not allowing staff to take company computer equipment home in order to work from home.
 - 4.2 Did the PCP put the Claimant at a substantial disadvantage compared

to someone without the Claimant's disability, in that she was

- 4.2.1 put at additional physical risk from unable to shield during the pandemic; and
- 4.2.2 caused to suffer stress and anxiety?
- 4.3 Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?
- 4.4 What steps could have been taken to avoid the disadvantage? The Claimant suggests:
 - 4.4.1 allowing her to work from home;
 - 4.4.2 allowing her to take company computer equipment home.
- 4.5 Was it reasonable for the Respondent to have to take those steps?
- 4.6 Did the Respondent fail to take those steps?

Holiday Pay (Working Time Regulations 1998 / unauthorised deductions/breach of contract)

5. Did the Respondent fail to pay the Claimant for annual leave the Claimant had accrued but not taken when her employment ended? The Claimant claims a sum of £24.62, equivalent to 0.2 days' holiday. The Claimant did not call any evidence in respect of her holiday pay claim and no accounts were available to establish it. However during questioning Ms Ferguson, on behalf of the Respondent, stated that if their accountants had mistakenly not paid the amount then it would be readily paid. Therefore if following a review by the Respondent of its accounts the sum of £24.62 is outstanding, the Respondent is ordered to pay it.

Evidence

6. The Claimant gave evidence on her own behalf. The Respondent called Ms Belinda Ferguson, Managing Director and Ms Ali Degutis, Account Director to give evidence. All witnesses gave evidence under oath of affirmation and were subject to cross examination and questions from the Tribunal.

7. The Tribunal was also referred to relevant pages in a bundle of 198 pages.

Facts

8. The Tribunal has found the following facts from the evidence.

9. The Respondent was established in 2003 and employ 6 employees, five full time employees and one part-time employee. It provides marketing and promotional services to third parties.

10. The Claimant was employed as a graphic designer by the Respondent on 24 October 2011. She was required to work on a computer with good processing power, two screens and access to the Respondent's secure onsite server to effectively undertake her role.

11. The Claimant suffers from chronic asthma. In 2017 the Claimant had a conversation with Ms Ferguson explaining that dogs exacerbated her condition. She also spoke to Ms Ferguson in 2019, following a period of sickness absence for bronchitis which was exacerbated because of her asthma.

12. Between January and February 2020 the Respondent lost significant business when clients cancelled booked and planned events. The value of the cancelled work was in excess of £450,000. Due to the coronavirus pandemic, the Respondent's UK and overseas events business ceased resulting in a 50% reduction in business turn over.

13. Towards the end of February 2020, the adverse consequences of the coronavirus pandemic were being increasingly felt by the Respondent. It's major client, Nestle PURINA, announced that they were temporarily closing all their offices across Europe, asking staff to work from home and cutting back on promotional activity.

14. The Respondent was subject to significant uncertainty and Ms Ferguson found it necessary to make contingency plans. Ms Ferguson resolved to keep the Respondent's business offices open for as long as possible and she made enquiries to establish which staff could operate and work successfully from home.

15. Ms Ferguson also considered whether it was necessary to close the Respondent's office. She determined that if there was not a quick and significant improvement in new business then she would need to ask staff to reduce their working hours and pay or she would have to make redundancies. Ms Ferguson discussed the options with the Respondent's accountants in order to get an understanding of what course of action may be best to ensure the Respondent's survival.

16. On 16 March 2020 Claire Murphy, the Respondent's office manager, sent all staff an email regarding future working. She asked staff:

1. *Do you have computer equipment you could use if working from home?*
2. *Do you have a sufficient Broadband supply?*
3. *Is the software on your home computer relevant for the tasks required?*

17. The Claimant responded to that email that afternoon with her abrupt reply stating

Answers...

1. *No*
2. *Yes*
3. *No*

18. On Tuesday 17 March 2020 the Claimant had a conversation with Ms Degutis. She asked if Ms Ferguson and Ms Degutis were talking about what they were going to do in light of the pandemic. There was a general informal conversation about the pandemic and its effects and Ms Degutis explained that no final decision had been made as to what was going to be done. The Claimant stated that she was worried about the effects that the coronavirus may have on her as she was asthmatic. She asked if she could work from home on a large project. She stated that she could easily

package it up and take the computer and work from home. The Claimant said that she was not refusing to work but she just rather not come to the office as she did not feel it was safe, as it was possible for her to easily work from home.

19. Ms Degutis later told the Claimant that she had spoken to Ms Ferguson on the phone and that no equipment was to leave the building. The Respondent could not agree for company equipment to be taken off its premises until they had sorted out proper insurance for the equipment and ensured that clients were comfortable with the Respondent's using their data by staff working from home. Ms Degutis stated that if the Claimant was worried about her health then she should stay at home. Ms Degutis asked the Claimant if she was going to be coming in to work the next day and the Claimant stated that she would actually attend work as the Respondent was busy.

20. No discussion took place concerning the Claimant's pay if she did not attend work but in any event the Claimant attended for work.

21. On Wednesday 18 March 2020, at about 10.30am, an unscheduled group meeting was called with all staff including the Claimant. Ms Ferguson said she had decided to close the office from Monday 23 March 2020 onwards. She said staff would be paid until the end of March as per the usual payroll. From 1 April 2020 it was proposed that staff would work a three day week and in addition staff would get £30 a day from the Government for any days they were not working. Ms Ferguson informed staff that as their contracts did not have a clause to allow for short term working, they were being asked to sign a letter to enable a change to allow this. Ms Ferguson stated that if the Respondent was unable to obtain employee agreement, they may have to consider alternate measures, such as redundancies. Ms Ferguson informed staff that she would be off site for the day and in the interim if there were any questions Ms Degutis could answer them. The Claimant did not ask any questions.

22. A letter dated 18 March 2020 was sent to staff recording the contents of the meeting and asked staff to sign consent to the short term working agreement. The letter included the following:

"You are not entitled to receive normal wages for any days that you are not offered work during this period, however you are entitled to receive a Guarantee Payment of £29 per day for the first five days of this period. Please note that the Guarantee Payment is payable for the first five workless days within a three month period.

We propose closing the offices from Monday 23rd 2020 however you will be paid full salary up to and including 31st March 2020. From 1st April until 30th April 2020 we propose reducing the working week to three days however you will not be required to attend the office during this period.

You would be expected to remain available for work and contactable by the company during this period, in the event that any work, including any suitable alternative work, becomes available at short notice. If you agree with this proposal to implement a period of short term working please complete the attached form and return it to Alison Degutis by no later than Thursday 19th March."

23. The Claimant did not sign the letter. She did not seek to query it. She did not

speak to any of her colleagues for their views or seek to address any concerns about ambiguity relating to pay. Instead she spent time trying to get legal advice about what she considered to be the ambiguity in relation to the pay.

24. The Claimant was the only member of staff who had not signed the agreement by 19 March 2020 as requested.

25. On 20 March 2020 Ms Ferguson went to the Claimant's office to discuss why her agreement to the proposal had not been forthcoming. Having regard to the competing versions of the meeting we find that the following occurred.

"Ms Ferguson: You have not signed the letter.

Claimant: No. I'm not signing anything

Ms Ferguson: Is there a particular reason why you're not signing it?

Claimant: No, not a particular reason.

Ms Ferguson: [Exasperated sound] Well I don't know what that's supposed to mean.

Claimant: I don't know what to do. I haven't had time to seek legal advice, and with everything the... Government is about to announce, I just don't know.

Ms Ferguson: Your role would be under threat of redundancy and I'll have to proceed to the next step then to protect the business.

Claimant: OK, Whatever.

Ms Ferguson then left the Claimant's office."

26. Ms Ferguson was very disappointed with the Claimant's approach and gave further thought to what should be done. She reflected and, in the circumstances, she decided that it was essential to take action to reduce costs and that the closure of the graphics department was necessary. In 2018 the graphics studio comprised 44% of the business' turn over, but that had fallen to 34% of turnover by 2020. There were three employees within that studio in 2018, but the number of employees had already reduced to only one by 2020. The work for the studio had declined and with the drop in business and the effects of the coronavirus pandemic it was anticipated that there would be a further reduction in work in the graphic studio. Ms Ferguson did not believe that the position would improve in the foreseeable future and decided to close the studio department and, when design work was required, then it could be outsourced to freelance workers. Ms Ferguson concluded that this would result in reduced fixed costs and a more flexible and efficient way of operating. The Respondent had from time to time already outsourced design work as appropriate previously when there had been more work available. The Respondent had also closed its digital department and used outside freelancers in a similar way previously.

27. Ms Ferguson's closure of the graphic design department meant that only one person employed in it, the Claimant, was to be made redundant. Following this consideration, Ms Ferguson decided that the Claimant should be made redundant with immediate effect. She notified the Claimant of this in a short meeting later in the

afternoon of 20 March 2020 and handed the Claimant a letter confirming this. The letter stated:

“Further to our conversation of this morning I write to inform you that you are the only person who has not agreed to the offer that was given to all employees to try and safeguard the business and ultimately the jobs of the entire workforce in these extraordinary times.

We have been working over recent days considering all of the options open to the company and we have taken the decision that regrettably we have no alternative other than to close the department that you work in and make your position redundant with immediate effect.”

Law

28. For unfair dismissal the relevant parts of section 98 of the Employment Rights Act 1996 state:

General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b) relates to the conduct of the employee,
(c) is that the employee was redundant, or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
(b) “qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), 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.

29. In respect of redundancy section 139 of the ERA states.

Redundancy

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

(2) For the purposes of subsection (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).

(3) For the purposes of subsection (1) the activities carried on by a [F1local authority] with respect to the schools maintained by it, and the activities carried on by the [F2governing bodies] of those schools, shall be treated as one business (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).

(4) Where—

(a) the contract under which a person is employed is treated by section 136(5) as terminated by his employer by reason of an act or event, and

(b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment, he shall be taken for the purposes of this Act to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in paragraphs (a) and (b) of subsection (1).

(5) In its application to a case within subsection (4), paragraph (a)(i) of subsection (1) has effect as if the reference in that subsection to the employer included a reference to any person to whom, in consequence of the act or event, power to dispose of the business has passed.

(6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.

30. The Tribunal considered the guidance set out in the case of Williams v Compair Maxam [1982] IRLR 83 specifically:

30.1 The employer should give as much warning as possible of the impending redundancies to enable the affected employees to take early steps to inform themselves of the relevant facts, consider any alternative solutions and, if appropriate, find alternative employment either in the

same business or elsewhere.

- 30.2 Consult as to the best means of achieving the desired result both fairly and causing as little hardship as possible to the employees. The employer should seek to agree the redundancy selection criteria and after selection has been made to consider whether the selection was made in accordance with the established criteria.
- 30.3 The selection criteria established should as far as possible not depend solely upon the opinion of the person making the selection, but can be objectively checked against such matters as attendance record, job efficiency, experience and length of service.
- 30.4 Employers should seek to ensure that the selection was conducted fairly in accordance with the established criteria.
- 30.5 The employer should consider whether instead of dismissing an employee, it could offer her alternative employment.

Disability

31. The Claimant's disability, chronic asthma, was no longer in dispute. In respect of disability discrimination knowledge of disability was in issue. Mr Sellwood referred the Tribunal to the Court of Appeal case of Gallop v Newport City Council [2013] EWCA Civ 1538 where Lord Rimer stated at paragraph 36

As to that, Ms Monaghan and Ms Grennan were agreed as to the law, namely that (i) before an employer can be answerable for disability discrimination against an employee, the employer must have actual or constructive knowledge that the employee was a disabled person; and (ii) that for that purpose the required knowledge, whether actual or constructive, is of the *facts* constituting the employee's disability as identified in section 1(1) of the DDA. Those facts can be regarded as having three elements to them, namely (a) a physical or mental impairment, which has (b) a substantial and long-term adverse effect on (c) his ability to carry out normal day-to-day duties; and whether those elements are satisfied in any case depends also on the clarification as to their sense provided by Schedule 1. Counsel were further agreed that, provided the employer has actual or constructive knowledge of the facts constituting the employee's disability, the employer does not also need to know that, as a matter of law, the consequence of such facts is that the employee is a 'disabled person' as defined in section 1(2). I agree with counsel that this is the correct legal position.

32. The Tribunal therefore considered whether there was actual or constructive knowledge of the Claimant's disability.

33. In respect of indirect discrimination section 19 EqA states:

A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2)For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

34. In respect of reasonable adjustments section 20 and 21 EqA state

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

Holiday pay

35. The Claimant's unpaid holiday pay was considered under Regulation 30 of the Working Time Regulations 1998 and section 13 Employment Rights Act 1996.

Conclusions

Unfair dismissal

36. The Tribunal conclude that the Claimant was dismissed by reason of redundancy, a potentially fair reason. There was a drastic reduction in work which resulted in the decision not to maintain a graphic designer as a permanent employee with continued cost. The Claimant's refusal to accept the short-time working arrangements that were offered resulted in this decision being made.

37. The Tribunal considered whether the dismissal was fair and reasonable in all the circumstances. There was a dramatic change in circumstances reducing the work to the Respondent. The Respondent is a small employer and Ms Ferguson consulted them all at a meeting on 18 March 2020.

38. All staff, including the Claimant, were given an opportunity to discuss the proposals made by Ms Ferguson at the meeting. No staff objected at the time and none provided alternative proposals. The meeting was underlined by a letter to all staff giving them the opportunity to consent to short term working. The Claimant was the only member of staff who did not wish to do so.

39. There was a brief meeting between the Claimant and Ms Ferguson on 20 March 2020. This was not formally planned but in view of the small size of the Respondent such informality did not render the process unfair. The Claimant had an opportunity to put her views but was resistant to the change and did not suggest alternatives.

40. There were public announcements relating to potential government protection of wages being broadcast on 17 March 2020 but there was no firm detail. We do not conclude that it was unreasonable for Ms Ferguson to seek to manage her business without waiting for the detail of the possible government announcements. The Claimant, by refusing to agree to the proposal of short term working, without providing any alternatives for consideration, precipitated her selection for redundancy.

41. Ms Ferguson intended to use freelance workers to undertake graphic design work in future. This opportunity was not offered to the Claimant as a mitigation of the consequences of dismissal. However, it would not have prevented the Claimant's dismissal and in view of the Claimant's refusal to remain employed on short term working, the offer of projects on an uncertain, not guaranteed basis was unlikely to have been positively received by the Claimant.

42. Whilst Ms Ferguson could have reviewed the decision to make the Claimant redundant once the full detail of the government furlough scheme was published, we do not consider that her failure to do rendered the dismissal, that had already occurred, unfair.

43. The Claimant's claim for unfair dismissal therefore fails and is dismissed.

Disability

44. It is accepted that the Claimant is disabled for the purposes of section 6 EqA by reason of chronic asthma.

45. The Tribunal conclude that the Respondent had, at the very least, constructive knowledge of the Claimant's disability. The Claimant discussed her health details in general terms with Ms Ferguson and Ms Degutis in 2017, in 2019 when she had time off for Bronchitis and also when expressing concerns about the pandemic on 17 March 2020.

Indirect discrimination (Equality Act 2010 section 19)

46. We do not conclude that the Respondent had a "PCP" provision, criterion or practice of not allowing staff to work from home unless they had a company laptop. The email sent to staff by Claire Murphy on 16 March 2020 asking whether they had a computer and broadband to work from home is contrary to this allegation.

47. We conclude that there was a PCP not to allow graphic design staff to take company computer equipment away to work from home. We find the PCP would have been applied to all employed graphic designers. This PCP was applied to the Claimant as a graphic designer.

48. We do not conclude that at the time the PCP place the Claimant at a particular disadvantage as she was able to attend work, albeit very worried about doing so. We cannot conclude that she was at any greater stress or anxiety than non disabled persons at the time regarding travelling during the pandemic. However, had the Claimant been unable to attend work due to her fear we would have concluded that she would have been placed at a particular disadvantage.

49. If we were required to consider it, we would have concluded that at that limited time the bar on taking computer home was justified. Time was needed to get insurance in place and necessary client consents before the computer could be taken out of the office. This could not have been done immediately, as the Claimant required.

50. The Claimant's claim for indirect disability discrimination therefore fails and is dismissed.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

51. We do not conclude that the Respondent had a "PCP" provision, criterion or practice of not allowing staff to work from home unless they had a company laptop. The email sent to staff by Claire Murphy on 16 March 2020 asking whether they had a computer and broadband to work from home is contrary to this allegation.

52. We conclude that there was a PCP not to allow graphic design staff to take company computer equipment away to work from home. We find the PCP would have been applied to all employed graphic designers. This PCP was applied to the Claimant as a graphic designer.

53. We do not conclude that, at the time, the Claimant was placed at a substantial disadvantage compared to someone without her disability, in not being able to take the computer to work at home. The Claimant was able to make arrangements to travel safely into work and we do not accept that she had further anxiety or stress relating to

travel than non disabled people at the time. There was widespread pandemonium as a result of the Covid-19 pandemic then.

54. In any event, it would not have been a reasonable adjustment to allow the Claimant to take the computer home. Insurance approval and client consent needed to be obtained beforehand.

Holiday pay

55. The Claimant claims a sum of £24.62, equivalent to 0.2 days' holiday. However, the Claimant did not call any evidence in respect of her holiday pay claim and no accounts were available to establish it. During questioning Ms Ferguson, on behalf of the Respondent, stated that if their accountants had mistakenly not paid the amount then it would be readily paid. If following a review by the Respondent of its accounts the sum of £24.62 is outstanding, then the Respondent is ordered to pay it.

56. The provisional remedy hearing listed for 30 November 2021 is vacated.

Employment Judge Burgher
Date: 6 September 2021