



EMPLOYMENT TRIBUNALS

Claimant: Ms K Kohli

Respondent: Department for International Trade

Heard via Cloud Video Platform (London Central)

On: 11, 12, 13, 14 October 2021

Before: Employment Judge Davidson
Mr S Hearn
Mr M Ferry

Representation

Claimant: in person

Respondent: Mr R Moratto, Counsel

RESERVED JUDGMENT

The unanimous decision of the tribunal is that the claimant's complaints of race discrimination and disability discrimination fail and are hereby dismissed.

Employment Judge Davidson

Date 26 October 2021

JUDGMENT SENT TO THE PARTIES ON

27/10/2021.

FOR EMPLOYMENT TRIBUNALS

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

CVP hearing

This has been a remote which has been consented to by the parties. The form of remote hearing was Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

REASONS

Issues

1. A list of issues had been drawn up following a case management hearing on 22 April 2021 before Employment Judge Segal QC, although he noted that there was not enough time at that hearing to deal with the matter fully and that there may be changes to the list of issues which could be discussed at the start of the full merits hearing.

Protected characteristics

2. At the outset of this hearing, it was clarified that the claims before the tribunal were race discrimination and disability discrimination. The claimant confirmed she was no longer pursuing claims based on the protected characteristics of sex and religion.
3. The claimant relies on the protected characteristics of her Race (Indian) and Disability. The disabilities she relies on are

3.1. Fibromyalgia

3.2. Respiratory condition following a collapsed lung (pneumothorax)

3.3. Sciatica

4. In respect of the above alleged disabilities, the Claimant says that they were all ongoing during the material period (approximately June to October 2020) and that the Respondent had knowledge of each of them: from about April 2020 in respect of sciatica and from earlier dates in respect of Fibromyalgia and pneumothorax.
5. In oral submissions the claimant also referred to a slipped disc but we heard no evidence about this and do not consider this as a pleaded disability.
6. The respondent disputes disability.
7. The tribunal will determine whether the claimant had a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about as follows:
 - 7.1. Did she have a physical or mental impairment?

- 7.2. Did it have a substantial adverse effect on her ability to carry out day-to-day activities?
- 7.3. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
- 7.4. Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
- 7.5. Were the effects of the impairment long-term? Did they last at least 12 months, or were they likely to last at least 12 months? If not, were they likely to recur?

Job role

8. Did the respondent discriminate against the claimant because of her race and/or her disabilities as follows (**direct discrimination contrary to section 13 Equality Act 2010**):
 - 8.1. in about August 2020 by not permitting her to return to her previous role as 'Head of Latin America and the Caribbean' (LATAC);
 - 8.2. in about June 2020 by offering the Head of Africa role to PG (who is white) and not to her;
 - 8.3. in about September/October 2020 by offering the Head of Africa role (which was becoming vacant in December) to another person and not to her;
 - 8.4. in about September/October 2020 by requiring her to take on the role which was 50% LATAC, with a focus on the Caribbean and 50% wellness within GSD?
9. The original list of issues included a complaint about the Head of Russia role not being offered to the claimant and the fact that, on or about 14 October 2020, she was given an assignment relating to Venezuela which she contended was outside of her job role, but these was not pursued at the hearing and the claimant made no submissions on these.
10. Did the respondent discriminate against the claimant in that its decision not to allow her to return to her original job role, or to offer her an equivalent job role, was in part based on her appraisal performance score of 3C? She claims that the Respondent's reliance thereon in determining her job role constituted discrimination against her because the grade resulted from inter alia restrictions on her ability to work from the office, attend certain meetings, take frequent breaks (**discrimination arising from her disability contrary to section 15 Equality Act**).

Performance appraisal

11. Did the respondent discriminate against the claimant by:

- 11.1. giving her, on about 18 August 2020, a '3C' rating for the year ended 31 March 2020, because inter alia of restrictions on her ability to work from the office, attend certain meetings, take frequent breaks (**discrimination arising from her disability contrary to section 15 Equality Act**);
- 11.2. alternatively, because of her race by giving her, on about 18 August 2020, a '3C' rating for the year ended 31 March 2020 (**direct discrimination contrary to section 13 Equality Act 2010**)? The Claimant relies on an actual comparator, CA, employed at the same level/grade as herself, whose performance was appraised more favourably (3B).

Reasonable adjustments

12. In circumstances where its criteria or practices in relation to setting objectives and appraising performance put the claimant as a disabled person at a substantial disadvantage in comparison with persons who are not disabled, did the respondent fail, to take such steps as it was reasonable to have to take to avoid that disadvantage? The claimant contends the following were reasonable adjustments the respondent should have made:

- 12.1. setting clear performance objectives appropriate to the performance which could be expected of her given her disabilities;
- 12.2. alternatively, making adjustments to the objectives which the Claimant had set out in about December 2019 to take account of her disabilities.

13. The claimant complained about the failure to provide her with appropriate workstation equipment in her claim form but this was not included in the List of Issues. We decided that we would hear evidence regarding this but we would take into account the fact that the respondent was not expecting this to be dealt with at the hearing and had not included relevant documentary evidence to support its position and it had not been dealt with in the witness statements. In the event, the respondent was able to locate and adduce the relevant documents, which were produced during the course of the hearing.

14. We did not consider issues relating to the conduct of the claimant's grievance or appeal against appraisal grades as issues on which we were required to make a determination as they were not within the List of Issues. Many of the matters referred to by the claimant post-dated the claim form and were not matters before us.

Evidence

15. The tribunal heard evidence from the claimant, Michael Melville (Union representative) and Anisa Ahmed (Senior Policy Advisor) on behalf of the claimant and from Becks Buckingham OBE (now Head of Mission and, at the relevant time, Deputy Director) and Jonathan Hanna (Head Emerging Markets Strategy) on behalf of the respondent.
16. The tribunal also had witness statements from Stephen Taylor (union representative) for the claimant and John Thompson (Deputy Director for International Strategy, who was the grievance decision manager) and Lucy Buzzoni (Director of International Strategy and Engagement, who was the grievance appeal manager) on behalf of the respondent. We read these statements but did not consider that they contained relevant evidence and we gave them little weight.
17. There was a hearing bundle of 636 pages and a supplementary bundle of 310 pages. During the course of the hearing further documents were disclosed and put in evidence.
18. The claimant had prepared an Impact Statement in respect of her disability claim. The medical evidence she disclosed comprised a letters dated 16 September 2020 and 25 February 2021 from the Ealing Community Musculoskeletal Service, occupational health reports and a GP letter dated 21 June with a brief narrative of the claimant's conditions and a list of medications. The GP notes were not disclosed.

Facts

The tribunal found the following facts on the balance of probabilities:

19. The respondent is a government department dealing with international trade.
20. The claimant joined the respondent on 10 July 2019 working in the Global Strategy Directorate (GSD) as a Grade 7.
21. The claimant has a condition known as Fibromyalgia which causes aches and pains with occasional flare-ups. She was not on regular medication but took painkillers if she had an episode. At a workstation assessment in August 2019, the claimant reported to the workstation assessor that she had a dull aching sensation which could develop into tightness and discomfort. Following this, the claimant was provided with a 'sit-stand' desk and an adapted chair in the office. Although the respondent operated a 'hot-desk' office, she sat at the same workstation every day. She worked compressed hours, one day a week from home and three days in the office. She did not have sit-stand desk or adapted chair at home.
22. Her initial role within GSD was a dual role as Head of Latin America and the Caribbean (LATAC) (geographic role) and Global Britain (thematic role).

23. Shortly after she started in the department, on 26 July 2019, the claimant suffered a pneumothorax as a result of treatment she was receiving in respect of fibromyalgia. This resulted in some breathing difficulties for a period of weeks. For a period, the claimant worked from home doing reading and was not working at full capacity. She did not take any sick leave. She returned to the workplace in August 2019.
24. At the start of her employment in GSD, her manager was Sean Kirwan and her countersigning manager was Becks Buckingham. Sean Kirwan was replaced temporarily by Tom Smith at the end of September 2019 who remained her manager until November 2019. By the end of this period, which included the period of ill-health, she had not agreed objectives with either of her managers.
25. In October 2019 there were internal changes within GSD as a result of which the claimant was offered a choice between a geographical role in LATAC or a thematic role in Global Britain. She chose LATAC.
26. In November 2019, Jonathan Hanna became the claimant's manager. He also had responsibility for two other Grade 7 employees, CA and PG.
27. On 18 December 2019, the claimant emailed Jonathan Hanna with her draft objectives for the remainder of the appraisal year to end of March 2020. He replied with his comments in January 2020 and the objectives were adopted.
28. On 30 March 2020, national lockdown due to the pandemic had started and the claimant was working from home. She sent an email to the Health & Safety team, copying in Jonathan Hanna, asking for her ergonomic chair from the office to be sent to her house, or a new one ordered for her. She cited the workplace assessment recommendation for a special chair as a reasonable adjustment. She also asked for a desk, saying '*I don't need anything too expensive just somewhere to lay my laptop etc.*'.
29. On 31 March and 1 April 2020, the claimant had a lengthy exchange of emails with Steve Smith (Health & Safety Officer) regarding her office equipment for home. The focus of these emails was on the chair she wanted and she stated expressly that her main concern was the chair. There was some reference to the desk but, as her workspace at home was small, her emphasis was on the size of the desk. None of these emails were copied to Jonathan Hanna.
30. On 31 March 2020, Jonathan Hanna conducted the claimant's end of year appraisal. It was agreed that the appraisal would only cover the period from late November to the end of March. The previous period was not taken into account due to the disruption due to the claimant's ill-health, the change of managers and the absence of agreed objectives.
31. On 31 March 2020, Jonathan Hanna went on paternity leave until mid-May when he returned on a phased basis.

32. On 1 April 2020, the claimant sent Jonathan Hanna an email (copied to Becks Buckingham) setting out her thoughts about the grade and commenting that her year had been affected by her medical issues and the absence of objectives until November/December. By this time, Jonathan Hanna was on paternity leave and did not respond. He understood from these comments that the claimant wanted it to be recorded on her appraisal form that she had ill-health issues. When she later saw that he had included this information, she requested that it was removed, which was done.
33. The office chair was delivered to the claimant's home on 7 April 2020 and she commented to Steve Smith that it was giving her '*great support*'. On 14 April 2020, Steve Smith sent a link to the standard issue desk he was proposing to send to the claimant, to which she replied '*Super thanks hope it will be fine*'. He arranged for this to be delivered but the claimant rejected it as it was not brand new and she was concerned about COVID transmission from the pre-used desk as she had a high risk family member at home. She said she understood if they could not organize a brand new one for her. She did not mention the need for a 'sit-stand desk'.
34. The claimant complained that her condition got worse due to not having the correct chair and that from 20 April 2020 she started having shooting pains and then her condition deteriorated over the next weeks. We note that she was given medicated plasters on 15 April 2020. She was then prescribed painkillers but did not visit the doctor. This was during the COVID period. She was diagnosed as having sciatica by Ealing Hospital on 15 September 2020.
35. On 18 May 2020, the claimant commenced a temporary voluntary deployment (known as 'surge') with a team dealing with delivery of COVID test kits which was for a period of 8 weeks, after which it would be reviewed. The claimant received excellent feedback from the surge role.
36. There was a conflict of evidence regarding the contact the claimant had with Jonathan Hanna and Becks Buckingham over this period. It is accepted that there were conversations but there is no email correspondence to confirm what was discussed. Jonathan Hanna and Becks Buckingham say that they kept the claimant informed of the lack of an ongoing LATAC role in the department. The claimant disputes this. She says she complained to Jonathan Hanna verbally about the workstation. He disputes this. We find that the claimant did not raise the workstation issue with Jonathan Hanna and we can find no reason why Jonathan Hanna would not action the request if it had been made. We note that when it was raised with him in September, he actioned the request almost immediately. We find that Jonathan Hanna did discuss the issue of the LATAC role in a low-key informal way but did not follow any formal process. We note that the claimant's email complains that it had not been raised '*formally*' and we infer from this that it had been raised informally.

37. On 2 June 2020, Becks Buckingham asked another department, Bilateral Trade Relations (BTR) to take over the LATAC work while the claimant was on surge, noting that there was little going on at that time in the region. It is clear that Becks Buckingham considered that it was more than possible that the claimant would extend her surge but she made it clear to BTR that it was a temporary arrangement. In the handover to BTR, Jonathan Hanna identified three areas of work relating to LATAC which had been being undertaken by the claimant, two of which were, by then, in abeyance.
38. On 30 June, the claimant was offered and accepted a temporary promotion for six months as a Grade 6 Joint Deputy Head of GSSEP Strategic Communications and Briefing Unit, along with SG (white female). The claimant sent an email informing Jonathan Hanna and Becks Buckingham of the promotion in which she mistakenly referred to her new role as 'Deputy Director' instead of Joint Deputy Head. This caused some surprise as that would have constituted a double promotion. We do not find the expression of surprise that the claimant should be a Deputy Director disrespectful of the claimant, as she suggested.
39. On 7 July 2020 Steve Smith emailed the claimant following up a recent workstation assessment that all employees had been asked to do following the introduction of working from home. We did not see the assessment itself but can see from the follow-up email from Steve Smith that the claimant had raised concerns about her 'opportunities for learning and receiving feedback', 'changing activity during breaks' and 'staying stress free'. She appears not to have mentioned pain or any issues with the workstation equipment. The claimant did not recall this assessment but we are satisfied that it took place and that the claimant participated in it.
40. On 10 July 2020, Jonathan Hanna asked HR for confirmation of the situation with the claimant's redeployment in the light of her temporary promotion and the effect on his budget and ability to backfill.
41. During July, due to budget constraints following a reorganization of the Covid response teams, instead of the two G6 roles originally advertised, there was only one G6 role but a G7 role was also available. There was an expression of interest (EOI) for the G6 role which the claimant chose not to pursue. SG applied for the G6 role and was successful. The claimant was offered a G7 role in that team but, despite initially accepting it, changed her mind and chose to return to GSD. This was communicated to Jonathan Hanna on 31 July, with her expected return that day or 3 August 2020. He was taken by surprise and had not been aware that she would be returning then.
42. By that time BTR were looking after LATAC, which would not have provided sufficient work for a full time role. Jonathan Hanna discussed with the claimant over the next few weeks what other opportunities there were. These included roles dealing with the development and drafting of ODA business cases, the

working up of DIT's offer on commercial secondary benefits, a business manager role in Project DEFEND and Private Secretary to a director.

43. There was discussion regarding the Head of Russia role but we find that this would not have been an appropriate role for the claimant as it had been regraded to SEO level.
44. During the period the claimant had no role, Jonathan Hanna did not invite her to the weekly update meetings because, in his view, he thought that would be insensitive when she had nothing to update. He accepted that, in hindsight, this was not necessarily the right approach. He did continue to invite her to the wider team meetings.
45. One of the claimant's G7 colleagues within Jonathan Hanna's team, PG, had returned from surge in May/June and his previous job as Head of Middle East was no longer available on his return. The Head of Africa role was vacant and this was offered to him. When the claimant returned from surge on 3 August it was not a vacant role.
46. Following the appraisals of all staff, there was an assurance process to check that there was consistency across the board. When the claimant's grade was being discussed, there was a suggestion that she should perhaps be given a 4 rating. Jonathan Hanna advocated on her behalf and persuaded the assurers that 3C was the right grade.
47. Due to the awareness raised by the Black Lives Matter and other movements about potential unfairness towards BAME staff, a second assurance exercise was undertaken with specific attention to whether BAME staff had suffered from discrimination. Among the GSD team, all BAME staff received Grade 3 or above and there was no evidence of any institutional discrimination on grounds of race in the appraisal scores.
48. On 18 August, following completion of the assurance processes, the claimant was informed of her 3C grading. The claimant believes that she should have received a 2B grading. CA (the comparator) received a 3B grading.
49. On 9 September, the claimant appealed against her appraisal grade. Her appeal did not refer to race or disability discrimination.
50. On 14 September, the claimant lodged a grievance about not being able to continue in the LATAC role alleging sex, race and disability discrimination by Jonathan Hanna.
51. On 16 September the claimant went to a physiotherapist who drafted a letter requesting adjustments to her workstation. This was passed to Jonathan Hanna on 24 September who immediately raised it with the Health & Safety team who followed up with the claimant. On 25 September Health & Safety updated Jonathan Hanna and told him the claimant had said she did not want

a new desk until after an updated assessment from CSWAS (the respondent's workstation assessment service).

52. On 25 September the claimant was told she had to take the LATAC role (with a focus on the Caribbean) and Wellness role from 28 September as there was nothing else available at her grade and she had been without a role for eight weeks.
53. 28 September 2020, Richard O'Hara took over from Jonathan Hanna as the claimant's manager.
54. In September, the Head of Africa, PG, accepted a foreign posting which was due to take effect in December, leaving a vacancy for the Head of Africa role from that time. By this time there were also a number of employees from the disbanded development team who had to be placed in roles. An EOI was put out in October/November for the role. When the claimant became aware of the EOI for the Head of Africa role, she queried why the role had not been offered to her. Jonathan Hanna explained to us that there was no vacancy for the Africa job at the time the claimant was looking for roles and he did not want her to be without a role for a further 3 months, which was the period until the job became vacant. It is also apparent from the evidence that Becks Buckingham had reservations about the claimant's ability to do the job. We find that this assessment is based on Becks Buckingham's knowledge of the claimant and of the scope of the Head of Africa job, which is larger than Head of LATAC and involves line managing staff, which the LATAC role does not. We do not find that Becks Buckingham's view of the claimant is because of the 3C appraisal grade. It is more likely that the 3C appraisal grade is a reflection of her view of the claimant.
55. The claimant did not apply for the EOI. The role was given to Mike Morris, whose race/ethnic origin is Afro-Caribbean.

Law

56. The relevant law is as follows:

Definition of disability

57. Section 6 Equality Act provides that a person has a disability if they have a physical or mental impairment and that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
58. Schedule 1 of the Act provides that the effect of an impairment is long-term if it has lasted or is likely to last for at least 12 months. If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if it is likely to recur.

59. If measures are taken to treat or correct the effects of an impairment, the effects on the person's ability to carry out normal day-to-day activities should be considered without the impact of those measures.

60. In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.

61. The burden of proof is on the claimant to show disability.

Direct discrimination

62. Section 13 Equality Act provides: "(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."

63. The claimant must establish facts from which a tribunal could properly find that the treatment was because of her protected characteristic and the mere fact of a difference in status and a difference in treatment, without more, will not be sufficient for a tribunal to be able to conclude that the respondent had discriminated.

64. If the claimant shows facts from which it could be inferred that the respondent has treated her less favourably because of a protected characteristic, the burden of proof shifts to the respondent who must show that the treatment was in no sense on the grounds of the claimant's protected characteristic.

Discrimination arising from disability

65. Section 15 Equality Act provides that a person discriminates against a disabled person if they treat that person unfavourably because of something arising in consequence of the disability without being able to show that the treatment was a proportionate means of achieving a legitimate aim.

Reasonable adjustments

66. Section 20 Equality Act sets out the duty to make reasonable adjustments. This provides that, if there is a provision, criterion or practice (PCP) that puts a disabled person at a substantial disadvantage in comparison with non-disabled persons, the employer must take reasonable steps to avoid the disadvantage.

Determination of the Issues

67. The tribunal unanimously determined the issues as follows:

Disability

68. Is the claimant a disabled person within the meaning of the Equality Act 2010?

69. In her final submissions, the claimant referred to having back pain from a slipped disc. That was the first time this was mentioned and the respondent and the tribunal did not have an opportunity to explore whether the slipped disc may have provided a full or partial explanation for the symptoms experienced by the claimant which she has attributed to sciatica. For the purpose of this judgment, we will assume that the slipped disc is not the cause of any of the symptoms described by the claimant.

70. Dealing with the impairments she relies on in turn:

70.1. Fibromyalgia – we accept that the claimant has been diagnosed with fibromyalgia but there was a lack of evidence to show what impact this had on her ability to carry out day to day activities. The claimant said that she took painkillers if she had a flare-up but there was no evidence before us of persistent pain or an inability to function normally. Her impact statement suggests that she had no issues prior to March 2020 and she was able to carry out all the tasks she says she could not do after she developed sciatica. These include picking things up from the floor, lifting shopping, washing dishes, ironing and walking the dog. She does not attribute her difficulties post-March/April 2020 to the fibromyalgia but to the sciatica.

70.2. We note that the claimant had been provided with a ‘sit-stand’ desk and adapted chair at her workplace but we do not find that this, of itself, constitutes sufficient evidence to show that the fibromyalgia had a substantial adverse effect on her ability to carry out normal day-to-day activities. There was no medical evidence before us to indicate that there were long-term substantial effects which were being remedied by the provision of the chair and desk or, if there were such effects, what these were.

70.3. In respect of the period prior to March/April 2020, the claimant has failed to adduce evidence of a substantial long-term effect on her ability to carry out day-to-day activities. As regards the period after March/April 2020, the claimant has failed to show that any effect on her ability to carry out day-to-day activities was as a result of the fibromyalgia. We therefore find that the claimant has failed to show that the fibromyalgia constitutes a disability for the purposes of the Equality Act 2010.

- 70.4. Pneumothorax – we find that we did not have sufficient evidence to conclude what impact this condition had on the claimant. There is no medical evidence outlining the effect of the condition or that she received treatment for it. Her evidence is that she took no time off work when she had the pneumothorax, although she worked from home for a period. In any event, we find that this condition did not last for twelve months and therefore does not qualify as a disability for the purposes of the Equality Act.
- 70.5. Sciatica – We accept that the claimant has received a diagnosis of sciatica and that she has been prescribed painkillers and has had some physiotherapy treatment between September and November 2020. She describes a gradual deterioration from 17 or 20 April although the list of prescribed medication shows she was given a medicated plaster a few days before that, on 15 April 2020. She was then prescribed painkillers on 24 April 2020, 30 April 2020, 11 June 2020, 16 July 2020 and then not until 28 May 2021.
- 70.6. Her description of the impact of the sciatica is inconsistent. She refers to unbearable pain in April 2020 but also of a gradual onset of pain culminating in July/August 2020. It is not referred to by the GP in his letter of 12 June 2020 and the claimant did not mention it in her exchange of emails with Steve Smith during this period when they were discussing office equipment. There is no evidence of her raising her pain issues to her manager by email before September 2020. She does not appear to have mentioned any pain issues in a workstation assessment relating to her home working environment in July 2020. There is no evidence of any pain medication being prescribed between July 2020 and May 2021 which is inconsistent with the account in her impact statement and her oral evidence.
- 70.7. On the claimant's own account, the sciatica developed from April onwards and got worse (which she attributes to the lack of a desk) towards July and August 2020. She first sought physiotherapy in September 2020. There is no information regarding the sciatica after November 2020, which is the date of her last physiotherapy appointment.
- 70.8. She was prescribed medication in May 2021 but there is no detail regarding that medication to indicate if it was to deal with the fibromyalgia, the sciatica or something else entirely (for example, the slipped disc).
- 70.9. We therefore find that the claimant has not established that her sciatica amounted to a disability under the Equality Act 2010.

71. In relation to each of the alleged disabilities, we had no medical evidence before us from which we could form a view whether the impairments were likely to recur. It is for the claimant to provide such evidence.

72. We find that the claimant was not a disabled person for the purposes of the Equality Act 2010. If we are wrong about this, we go on to consider whether she has been discriminated against on the grounds of disability and/or race as alleged.

Direct Discrimination

73. We find that the claimant was subjected to the following treatment by the respondent:

- 73.1. she was not given her previous role of Head of LATAC on her return from surge;
- 73.2. she was not offered the Head of Africa role;
- 73.3. she was required to take the role of Head of LATAC (with focus on the Caribbean) and Wellness;
- 73.4. she was given a performance grade of 3C.

74. The claimant alleges that this treatment was tainted by disability discrimination and race discrimination. She bases her disability discrimination claim on her claim that her appraisal grade was affected by her medical situation. She bases her race discrimination on the difference in her race and that of her comparator, CA, who received a 3B grading.

The claimant's job role

75. We find that in relation to the LATAC role, the scope of the role was insufficiently demanding for a full-time G7 position. We note that the claimant's role was not originally a single role and only became a single role due to a reorganisation among geographical and thematic roles. During the course of April onwards, the reduction in the workload of the LATAC role was partly due to a change in prioritisation at ministerial level away from Latin America towards IndoPacific, Europe and Africa. As a result of these changes, the claimant's former role no longer existed in the way that it had previously and the claimant was not able to return to her former job on return from surge. Jonathan Hanna did not follow a formal redeployment procedure on advice from HR although there is contradictory HR advice in the bundle. We accept Jonathan Hanna's explanation for his decision as being based on the HR advice he received.

76. We do not find any discrimination in relation to the Head of Africa role. At the time the role was first vacant, the claimant was not free to take it up and it had been offered to one of her colleagues who was, at that time, without a role. When the claimant was looking for a role, the Head of Africa role was not vacant as it had been filled. By the time it would be vacant again, the claimant would have been without a role for a number of months and the respondent took the decision that it was not appropriate to keep her out of a role simply to give her

the Head of Africa role when it became vacant. We accept the respondent's evidence that, in any event, it could not just be given to the claimant. By that time, there were several other G7s looking for roles because their department had been disbanded. We also note that Becks Buckingham had reservations about the claimant's suitability for the role as she considered her skillset was better suited to an operational delivery role rather than strategy role. We note that the role was ultimately given to an Afro-Caribbean candidate. We accept the respondent's explanation and find it non-discriminatory.

77. As regards being forced to take the LATAC and Wellness role, we accept the respondent's explanation that she had been without a role for a number of weeks and the roles she was prepared to accept did not exist. The LATAC role was not big enough in itself but she was offered it together with another role in Wellness. We find nothing in this discriminatory.

The claimant's performance appraisal

78. We find that the claimant was disappointed with her appraisal grade but we do not agree that it signified an assessment of poor performance or that this grade impacted on her job roles. She had a misconception regarding the value of a 3C grade and incorrectly regarded it as a criticism of her performance.

79. We find that the claimant had an unrealistic view of her achievements and that the 3C grade reflected that she had met expectations against objectives. An adjustment had been made so that only the last part of the working year would be considered due to the absence of objectives and the claimant's ill-health in the earlier part of the year. It cannot therefore be said that the medical issues (even if they were disability related) which affected the claimant in the earlier part of the year resulted in the 3C grading, as that period was not taken into account. We do not find that the claimant has shown facts from which we could infer that disability was the reason for any of the treatment she complains about.

80. We accept that the 3C grade was Jonathan Hanna's honest assessment of the claimant's performance. We do not find that the slightly higher grade given to CA is tainted by discrimination. This was also Jonathan Hanna's honest assessment of a different employee with different objectives. From the claimant's evidence, she would have been unhappy if she had received the same as her comparator (3B) as she thought she should have received a 2B. The claimant has not shown any facts from which we could conclude that the decision was discriminatory other than a small difference in grade and a difference in race. The BAME assurance exercise that was undertaken illustrated that BAME employees were not disadvantaged as a group in their grading within the GSD department.

81. We accept the respondent's evidence that appraisal grades are not taken into account in job applications. We find that the 3C grading had no adverse impact on the claimant's job opportunities or career development.

Discrimination arising from disability

82. The claimant alleges that her appraisal grade was wrong and she feels she was marked down due to her medical situation during the Summer of 2019. We have found that the appraisal grade was based on her performance from December 2019 to March 2020, during which period, on the claimant's case, there were no medical issues that affected her performance.

83. Having made that finding, even if the claimant was a disabled person (which we have found not to be the case) we must conclude that this claim fails.

Failure to make reasonable adjustments

84. Did the respondent fail to make the following adjustments:

84.1. adjusting the claimant's objectives set in November/December 2019;

84.2. providing her with a special desk and chair at home from April 2020?

Objectives

85. The claimant set her own objectives and we do not understand what adjustments she could expect to the objectives she set for herself. She confirmed that she was aware of the limitations on her ability to perform her role due to her medical condition and took these into account when setting her objectives.

86. On the claimant's own case, she 'consistently met' and 'at times exceeded' these objectives (as required to reach a 2B grading which she claims she deserved) so she has not shown any disadvantage in relation to the objectives.

87. In relation to the limitations on performance identified by the claimant during her period of ill-health in the summer of 2019, these were not relevant to her grade as that period was not taken into account.

Desk and chair

88. We find that the claimant was provided with a chair on 7 April 2020. She reported back that it was giving her great support. The respondent attempted to provide her with a desk in mid-April 2020 but she rejected it for COVID related reasons, not because it was unsuitable.

89. In her numerous emails with Steve Smith she did not say to him that the chair and the desk were not the right ones. Once she had identified more clearly that she wanted her sit-stand desk from the office, which was a response to her sciatica getting worse, this was offered to her but she rejected the offer until after a further workplace assessment had been made.

90. The claimant blames Jonathan Hanna for a breach of his duty of care towards her in respect of the office equipment on the basis that he was copied into an email to Steve Smith on 30 March 2020 in which she asks for a desk and chair to be provided to her at home. Part of her claim is that he should have followed up. Leaving aside the fact that this email coincided with the start of Jonathan Hanna's paternity leave, on the face of the email he was copied into, the claimant's request is for an ergonomic chair and any desk. We find he is entitled to assume that the health and safety team will deal with this without input from him. He is also entitled to assume that any problems will be brought to his attention, as they subsequently were in September 2020. We find nothing to criticise in Jonathan Hanna's involvement in the workstation equipment.
91. During this period, the claimant was in contact with Steve Smith on a regular basis and was day-to-day line managed for part of the period within the COVID response team where she was on surge. She does not appear to criticise anyone for the issue of the desk and chair other than Jonathan Hanna.
92. We find that the respondent acted appropriately in relation to the provision of the desk and chair.

General comments and conclusion

93. During the course of the hearing and in submissions, it appeared that the claimant was also relying on the following issues:
- 93.1. the failure to give her the G6 role which went to Sam Griffiths
 - 93.2. exclusion from team meetings
 - 93.3. the way her appeal against the grading was dealt with
 - 93.4. the length of time her grievance took.
94. None of these are issues before this tribunal and we do not propose to deal with them.
95. The claimant is highly intelligent and articulate and presented her case thoroughly and competently. We accept that she feels genuinely aggrieved at a number of issues, not all of which were issues before us. However, we are satisfied that none of the issues we considered were tainted by race or disability discrimination. For the reasons set out above the claimant's claims fail and are dismissed.