



EMPLOYMENT TRIBUNALS

Claimant

Ms Liana Prikule-Pastare

v

Respondent

Wren Kitchens Ltd

PRELIMINARY HEARING

Heard at: Leeds by CVP

On: 9 and 10 February 2022

Before: Employment Judge O'Neill

Appearance:

For the Claimant: Mr N Clarke of Counsel

For the Respondent: Mr A Willoughby of Counsel

Russian Interpreter Ms L Munton

JUDGMENT and STRIKE OUT

1. The claimant has failed to show that she has a disability within the meaning of the Equality Act 2010.
2. Further, and in the alternative the respondent has shown that it had no knowledge of such a disability and could not reasonably have been expected to know that the claimant had a disability.
3. The claims are struck out as having no reasonable prospect of success under Rule 37 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

Purpose of Hearing

1. The preliminary hearing was listed to determine the following issues:
 - 1.1 Whether the claimant has a disability within the Equality Act 2010. (EQA)
 - 1.2 The date from which the respondent knew or ought to have known that the

claimant had a disability.

1.3 Whether any of the claims should be struck out on the grounds that they have no reasonable prospects of success.

1.4 Whether a deposit should be ordered in relation to any of the claims on the grounds that they have little reasonable prospects of success.

Evidence

2. The Claimant gave evidence in Russian through the Interpreter. Her nephew Mr Vadims Prikulis-Pastars also gave evidence but in English as did Ms L Ferriera the Respondent's HR Manager.
3. The claimant, and Miss Ferrara had each produced a witness statement and a supplemental statement, Mr Pastars produced one written statement, the statements were taken as read and the witnesses cross-examined. In the bundle of documents there was an impact statement from the claimant.
4. The tribunal had before it a bundle of documents, paginated and indexed, of 163 pages.
5. Counsel for both parties agreed that the medical report of Dr Kukar was not relevant, and I gave no consideration to it.
6. I gave no weight to an Evidential Surveillance Report prepared by Leonard's Corporate Solutions and which was not referred to by Counsel for either party, nor by any witness.
7. I gave no weight to the witness statement of Lea Chmelikova who did not attend the tribunal.

Law

8. S6 of the Equality Act 2010 defines disability under the Act as follows:

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(6) Schedule 1 (disability: supplementary provision) has effect.

9. Schedule 1 (2) (1) provides that an impairment is long-term if—

- '(a) *it has lasted for at least 12 months,*
- (b) *it is likely to last for at least 12 months, or*
- (c) *it is likely to last for the rest of the life of the person affected.'*

In this case paragraph 2(1) (b) is the relevant section.

10. A substantial effect is one that is more than a minor or trivial effect. s 212(1)
11. The tribunal is obliged to take into account the statutory guidance as to the definition of disability.
12. Guidance C4. 'In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age).'
13. 'Where a person is receiving treatment or correction measures for an impairment, the effect of the impairment on day-to-day activities is to be taken as that which the person would experience without the treatment or measures'.
14. The claimant's claims include discrimination arising from disability (S15), and failure to make a reasonable adjustment S20). Each of these claims requires knowledge on the part of the respondent. S 15(2) provides that '*subsection 1 does not apply if A shows that A did not know and could not reasonably have been expected to know that B had a disability.*' A like clause applies to S20.

Findings

15. Having considered all of the evidence both oral and documentary I make the following findings of fact on the balance of probabilities which are relevant to the issues to be determined. Where I heard or read evidence on matters on which I make no finding or do not make a finding to the same level of detail as the evidence presented to me that reflects the extent to which I consider that the particular matter assists me in determining the issues. Some of my findings are also set out in my conclusions below in an attempt to avoid unnecessary

repetition and some of my conclusions are set out in the findings of fact adjacent to those findings.

16. The Respondent is a national manufacturer and retailer of kitchens. The claimant was employed at its premises at Barton upon Humber. The claimant began employment with the respondent on 17 June 2019 as a general warehouse operative. All employees are subject to a 12 month probationary period. The claimant had a period of four weeks sick leave for stress from 3 February 2020 until 3 March 2020. She returned to work on 4 March 2020. She was dismissed on 19 March 2020. The respondents say that the decision to dismiss was made on the grounds of a failed probationary period by reason of her attitude, ability, lack of adherence to company policy and intermittent absence levels.
17. During her absence from work the claimant was sent AWOL (absence without leave) letters on the 5,7 and 11 February 2020 and was dismissed on 19 March 2020. The claimant contends that these were acts of discrimination arising from her disability, and or indirect discrimination.

In addition, the claimant contends that a number of PCPs (provision, criterion or practice) puts her at a disadvantage because of her disability in respect of which the respondent failed to make a reasonable adjustment. These PCPs include the requirement to telephone each morning during sickness absence, issuing the AWOL letters, an overtime requirement, a requirement to drive a pallet stacker, a requirement to work in a warehouse.
18. The relevant period for determining disability and respondent knowledge is broadly 3 February to 19 March 2020.
19. The claimant says in her disability statement dated 18 November 2020, that her mental impairment is anxiety and stress.
20. She further alleges in that statement that the anxiety and stress adversely impacts on her menstrual cycle in respect of which she suffers pain and other unpleasant symptoms. There is some reference to menstrual difficulties in the medical records but nowhere is that said to be attributed to stress and anxiety, or any other mental impairment. In the circumstances I find that the claimant's reference to menstrual problems as being attributable to stress may well be her genuine belief, but it is without foundation in her medical records.
21. On 3 February 2020 the claimant began a period of absence from work due to stress, following the theft of her motorbike.
22. The only medical records produced relating to a consultation before 3 February 2020 relates to a rash. In the period before 3 February 2020 there is no medical record relating to stress or anxiety or related to any alleged bullying incident in October 2019.
23. In her ET1 the claimant makes scant reference to what happened in October 2019. In her statement, she says *'when I was waiting to clock out he (the manager M) in a patronising tone asked me 'who are you' and indicated me to leave his this clock area..... I was shocked about how he spoke to me and patronised me'*. This is the only example of alleged bullying by M referred to in

the pleadings or the statement. This incident upset the claimant and caused her to take a day off work and the return to work document relating to the absence refers to stress.

24. In October the claimant was upset by the way her manager spoke to her, but his actions as described although inappropriate, fall short of bullying and appear to be a single incident and although the claimant had a day off due to stress there is nothing to support the contention that she continued to suffer from any mental impairment after that date. I find her suggestion that she had such an impairment from October 2019 to be an exaggeration and likely to be an attempt to bolster her case. I am strengthened in that view because the medical notes of 9 February 2020 record the claimant as saying she had no previous mental problem. In addition, I note that in later statements the claimant changed her account about what was said to 'who the hell are you' making it seem more significant. In the circumstances, I find that the claimant has failed to show a disability in the period October 2019 to February 2020.
25. In February 2020 it appears from the medical notes that the claimant had a number of problems which led to her being in distress such that her nephew advised to attend the accident and emergency department which she did on 9 February 2020.
26. That visit was recorded medical notes by the doctor as follows:

' being stressed lately. some issues with accommodation started two weeks ago now settled then an expensive (motor) bike got stolen, trying to chase insurance company as a result not been able to go to work last week, they have sent two letters that caused her more anxiety, feeling panicky, no self harm thoughts'.
27. The diagnosis given is stress at work, although from this record the trigger for the upset appears to be principally the theft of the motorbike although the claimant expressed concern about the AWOL letters and was anxious to obtain a backdated fit note (med 3). Medication was prescribed, namely Propranolol at 10 MG three times a day. The note goes on to say *'raised blood pressure likely stress advised to take up with GP trial with propranolol'.*
28. The claimant attended her GP on 13 February 2020 for an appointment arranged on or about 4 February 2020. As a consequence of this visit, a fit notes was issued until 1 March 2020 backdated to 3 February 2020 and giving stress as the reason for absence.
29. The record states that the claimant is *'very distressed upset, also work have insisted that she calls at 6 AM every morning to report in sick, she overslept one day and has had two very strict letters from HR most distressed about this'.*
30. There are no other medical report entries until 22 October 2020. When the claimant contacted the GP about menstrual issues, but there is no mention of anxiety, stress or depression. Then again on 4 November 2020 the claimant appears to have contacted the GP, following orders from the tribunal relating to

the production of medical notes. She does not appear to have attended for treatment or advice.

The notes record low mood, but no other mental impairment is mentioned. The note records that the claimant is reporting poor sleep and concentration difficulties.

31. There is also a letter from the GP Dr Hendow, dated 4 November 2020 which describes the propranolol as a low dose and as to the claimant's mental state, says that *'on 13 February she reported that she had not been at work since 3 February 2020 with work-related stress.... She was prescribed with propranolol to help her with the distress she was experiencing'*. The claimant is on a very low dose of propranolol, the leaflet she produced describes the normal dosage as 40 mg three times a day, which is four times higher than the claimant's own dose of 10 mg three times a day.
32. Considering the medical records alone there is nothing to suggest that the Claimant has a medical impairment likely to last twelve months or more. The GP puts only 'stress' on the fitnote. The dosage of propranolol is very low , a quarter of the standard dose and the claimant appears not to have asked for any increase in her dose and agrees that on some occasions she did not collect a prescription as she was feeling better and there is a particular gap in the prescriptions in May 2020. There is little to show a mental condition other than distress and upset.
33. In addition to the medical reports of 9 and 13 February 2020, there are also some contemporary documents, namely the letters the claimant sent to the respondent dated the 9 and 10 February 2020 and resent under cover of email of 17 February 2020.
34. The claimant's absence began on 3 February 2020. Under the respondent's sickness absence policy an employee is required to telephone their manager on a daily basis before the commencement of their shift when unable to attend work and no fit note has been submitted to cover the period. The claimant did that on the 3 and 4 February 2020 and spoke to her line manager Lee. She did not do so on 5 February and this triggered a standard AWOL letter dated 5 February 2020. *' I write with concern that we have had no contact from you since you contacted us about your absence on 4 February 2020. Please contact Ligia Ferreira on By 9.30 On 10 February to discuss your absence'*.
35. The claimant continued to be absent from work and the respondent, having had no telephone call from her by 7 February 2020 issued another AWOL letter and still having heard nothing from the claimant issued a third AWOL letter on 11 February 2020.
36. Although the claimant had not contacted the respondent by telephone after 4 February 2020, as required by the policy and by the AWOL letters, she had sent by email two letters dated 9 and 10 of February 2020. She had sent them to an

obsolete email address printed on a pre-employment document. These letters eventually reached the respondent on 17 February 2021 when they were re-sent by the claimant together with copies of the fit note issued on 13 February 2020 and a copy of the prescription.

37. The Claimant's statements do not set out what she said to Lee. I infer that on the 3 and 4 of February 2020 the claimant gave Lee much the same information as she sets out in her first letter to the respondent, namely that *'I cannot come in due to my bike, having been stolen during the night. That meant I have to deal with all administrative side of this by filling in police reports, speaking to my insurance companies et cetera. As you can imagine it's a very stressful event and couldn't have been dealt with in one day.'*
38. This gives me the picture that the claimant is having to take a day off not because of any illness or mental impairment, but because she was upset at the loss of her bike and needed time to sort out the administrative processes with the police and the insurance company. In other words, a reaction to adverse circumstances. I accept the evidence of Ms Ferreira that she formed such a view on 17 February when she received the email and that remained her view and I find that to be a reasonable view on the information before her.
39. After receiving the first AWOL letter the claimant wrote on the 10 February 2020 to inform the respondent that she has an appointment with the GP on 13 February 2020, but does not otherwise describe her symptoms or condition. However, in that letter she raises the matter of the AWOL letter of 5 February 2020, but not as a stress trigger. In the letter, the claimant is questioning the respondents contractual right to require her to telephone on a daily basis. I accept the evidence of Ms Ferreira that at the time (17 February) it appeared to her that in this correspondence the claimant was primarily concerned with challenging the respondent about her contractual obligation to report on a daily basis. I find that to be a reasonable view on the face of this particular part of the correspondence but the Claimant makes it clear in the next part of the correspondence that the AWOL letters or causing her stress which Ms Ferreira also recognised at the time.
40. The letter goes on to complain about the second AWOL letter of 7 February 2020, about which the claimant says *'it makes me feel intimidated and very anxious that you are sending me these letters when I have already advised and contacted the company that I am unwell and now suffer from increased levels of stress which have a negative impact on me physically. It came to the point that I felt so stressed that I needed to see a medical professional in Hull urgent care as I am so unwell and the company's way of communicating with me is making me feel even more stressed and anxious'*.
41. When Ms Ferreira received this email on 17 February 2020, it is the first time that the claimant has informed the respondent that the AWOL letters are causing her concern or that she has seen the doctor and has a fit note, giving the reason for absence as stress.

42. Any previous communication with the Lee predated the visits to the doctors and the AWOL letters. When the respondent issued the AWOL letters it had no knowledge of any disability, nor from the circumstances at that time ought it to have had such knowledge. The conversations with Lee described distress following the loss of the motorbike and the requirement the time of the deal with the insurers and the police. Part of the purpose of the AWOL letters was to inquire into the nature of the absence, at that point there was nothing more, the respondent's ought to have done to enquire about the claimant's condition.
43. The respondents in their AWOL letters were seeking to make contact with the claimant and I accept the evidence of Ms Ferreira that in her letter to the claimant of 17 February 2020 she was seeking to arrange a meeting and this was for the purpose of finding out more about the claimant's absence and supporting her return to work. In so doing, I find that she did all that she reasonably ought to have done at that stage to make further enquiries into the claimant's condition.
44. In the correspondence sent on 17 February 2020 the claimant goes on to say '*I really want to recover as soon as possible so I can come back to my work. It is just unfortunate at the moment I am going through so much stress in my private life, which is making the unfit for work at the moment*'.
45. In the letter to Nicola Harrison, dated 10 February 2020 and enclosed in the email of 17 February, the claimant says she is anxious to hear from the respondent. She continues to challenge the requirement to report on a daily basis. She says she is suffering from anxiety but gives no indication that her failure to follow procedure is caused by any aspect of her condition. She does not say that her sleep is disturbed but writes '*when mail arrives I imminently feel increased levels of anxiety and not hearing back from you really concerns me to the point I feel I won't be able to sleep at night*'. She does not say that she is unable to sleep.
46. Because the claimant had enclosed a fit note valid until 1 March 2020 she was not required to report on a daily basis under the respondent's sickness absence policy during the life time of the fit note and because of that, no more AWOL letters could be triggered until 1 March. I accept the evidence of Ms Ferreira that because the claimant said she found the AWOL letters stressful, Ms Ferreira had decided that no more AWOL letters would be sent. Strictly speaking, the respondent could have sent an AWOL letter on 2 March 2020 after the claimant's fit note had expired, and the claimant had failed to report by telephone at that stage, but none was sent.
47. There was no further communication between the claimant and the respondent until a meeting took place between Ms Ferreira and the claimant on 20 February 2020. There are no minutes to this meeting. The claimant does not describe this meeting in her ET1 or in her statements in any detail. In her statement, she says, the following a. '*I asked for reasonable adjustments and to be put on E line away from K and M*'.

48. Ms Ferreira recalls the meeting on 20 February and gives some detail in her statement and her oral evidence, but there is no contemporaneous note. She says in her statement *'I do not recall that she told me she was having any serious problems with her mental health. I am an experienced HR professional. If she had told me or let me to suspect that something as serious as a breakdown had occurred, I would remember this and I would have taken steps to support her'*.
49. On 25 February 2020, Ms Ferreira sent an email to her manufacturing colleagues, seeking their agreement to transfer the claimant to a different line. The email says that the claimant *'is currently off sick with work-related stress. She has spoken to me about the reasons for her absence and complained of bits about both M and K. She is claiming that she is being bullied by them'*.
50. Under cross-examination, Ms Ferreira was adamant that the claimant had not reported to her at the meeting on 20 February that she was suffering from work-related stress or that she had been bullied. Ms Ferreira asserted that the issues discussed were that the claimant was stressed about a private matter, namely the motorbike theft, had complained about general shouting by M but had not complained that he had specifically shouted at her, the possibility of a transfer to give the claimant a fresh start and the absence reporting procedure. Ms Ferreira insists that the claimant did not tell her anything to suggest that she had an ongoing stress condition.
51. I do not find it plausible that the HR manager would have written to colleagues in these terms, had there not been some discussion of work-related stress and bullying in the meeting with the claimant on 20 February 2020. However, there is no record of that meeting and the claimant has not given any evidence as to what she said to Ms Ferreira at that meeting to put Ms Ferreira on notice that she had a disability likely to last 12 months or more. The claimant indicated in terms that she tended to downplay the description of her symptoms because she was anxious to return to work.
52. Ms Ferreira was generally a credible and reliable witness prepared to make concessions on some matters, but holding firm under cross-examination in respect of other matters. I have considered whether my doubt that an HR manager would have written to colleagues in the terms of the email of 25 February if no such conversation had taken place with the employee and whether as a consequence, Ms Ferreira is not to be regarded as a credible witness overall. On balance, having seen her give her evidence, I find her to be generally reliable and credible witness, but that she mis-remembers the detail of their conversation on 20 February 2020 and that work-related stress and bullying is likely to have been mentioned. I accept her evidence of general recall that as an experienced HR professional had the claimant told her or led her to suspect that something as serious as a breakdown had occurred, she would have remembered this and she does not remember the claimant telling her this.
53. The respondent sickness policy provides that the employee may be referred to occupational health where there is an absence of 10 days or more, but the policy does not say that this will be done in every case. The respondent did not

do so. The second fit note expired on 3 March 2020 and did not contain any advice or conditions about the claimant's return to work. The claimant was presenting herself as fit to return after a relatively short period of absence. In the circumstances I do not consider that, by failing to refer the claimant to occupational health the respondent failed to do something it ought to have done to identify or enquire into the claimant's disability.

54. The claimant returned to work on 4 March 2020 and had a return to work interview with her line manager. I have been given no evidence as to what was said in that meeting, and there is no written record. The claimant has given no evidence that she has had any conversation or correspondence with the respondent managers after her meeting with Ms Ferreira on 20 February. There is no evidence to suggest that the claimant has informed the respondent of any continuing condition likely to last 12 months or more, or that she has provided them with information which ought to have prompted further enquiry or ought to have put them on notice of a disability and the claimant does not make any assertion to that effect.

55. The claimant has provided an impact statement and a supplementary impact statement dated 15 July 2021. The supplementary impact statements list many symptoms the claimant is said to be suffering from namely: low mood, intrusive thoughts, irritability, loss of concentration, interrupted sleep, fatigue, severe anxiety, nausea, panic attacks, difficulty in social situations, being out of control of emotions.

56. The fit notes do not refer to any condition other than stress.

In the medical notes of 9 February 2020 none of the above symptoms are mentioned apart from difficulty sleeping and feeling panicky.

In the notes on 13 February 2020, distress is recorded and it is noted that the claimant overslept on one occasion, but none of the other matters on the above list are recorded.

In the correspondence to the respondent the claimant makes no reference to any of the matters on the above list apart from anxiety and stress.

57. I find it not credible that if the claimant was suffering from such symptoms in the period 3 February to 19 March 2020 that she would not have reported them to the doctors on the 9 or 13 February 2020 or at any other time, in that period. She was on a very low dose of medication and I do not believe that her failure to return to the doctor can be attributed to the medication having masked the symptoms if they were as bad as she purports to make out in her impact statement.

Had she been experiencing such symptoms as those listed, then I would have expected her to have visited the GP or some other doctor but she has made no visits to the doctor for advice or treatment related to any mental impairment between 13 February 2020 and October 2020. The visit to the doctor in October 2020 related to menstrual issues. The visit to the doctor in November 2020 appears to relate to the tribunal order to produce medical records. In

November 2020 the GP's notes and a letter refer only to low mood and self reported poor sleep and concentration.

The fact that the claimant has not returned to the doctor for advice or treatment since 13th of February 2020 cast doubt on the credibility of her impact statement.

58. The claimant's impact statements paint a picture of someone seriously incapacitated by her mental impairment, for example at paragraph 10 a she says *'I require supervision for some everyday tasks; I struggle to focus and function at all and am in a constant state of despair. I feel confused and incapable of making decisions...'*

The statements make no reference to the fact that the claimant had secured other work in a factory doing 2 to 4 ½ days work all week, a matter which only came out in cross examination. The fact that the claimant is doing factory work, but chose not to reveal it in her impact statement casts doubt on her credibility and the impact statement as a whole.

Given that very shortly after her dismissal the claimant was working in a factory as described above I do not believe the claimant's impact statement, it is incredible that she was suffering all the symptoms listed above and was struggling to function.

59. I simply do not believe the claimant's explanation that the social media sites offering hairdressing services and showing photographs of hair cuts (which the claimant says that she had performed) and which were encouraging people to book appointments on the claimant's mobile phone related to the business of her friend rather than her own business. In this respect, I find that the claimant sought to mislead the tribunal and it casts doubt on her general credibility and on her impact statement. The hairdressing posts were contemporary with the relevant period (for example Valentine's Day 2020) from which I infer that the claimant was capable of taking telephone calls, speaking to strangers, making appointments, keeping appointments and cutting hair.
60. The medical records do not support the claimant's contention that her sleep pattern had been completely destroyed prior to 19 March 2020 or at all, and there is no evidence that the claimant needed an increased dose of medication.
61. I find that the claimant has exaggerated her symptoms to bolster up her claim and is not a credible witness as to the effects of her disability.

Conclusions

62. The burden of proof is on the claimant to show that she has a disability within the meaning of the Act.
63. I do not find the claimant to be a credible witness, and I find that she has exaggerated his symptoms to bolster up her claim.

64. Stress has been described in legal authorities as a loose term and 'a reaction to adverse circumstances' such as the theft of a motorbike may fall short of a mental impairment under S6 EQA.

65. I accept that the claimant was very upset when her motorbike was stolen. I also accept that she needed time to sort out the police reports and the insurance claims. I also accept that she found the AWOL letters stressful and she was worried about her future with the company. It is understandable that the confusion created when she sent her emails of 9 and 10 February to the obsolete email address and the consequential delay in replying on the part of Ms Ferreira as they were not seen by the respondent until 17 February 2020 increased the claimant's capacity for worry.

Taking into account the medical records and the claimant's own correspondence with the respondent and her impact statements I find that although the claimant was very upset she has failed to show that she had a mental impairment in the period 3 February to 19 March 2020.

I conclude that her upset and distress was an understandable but temporary reaction to adverse circumstances and I do not believe that at the time she had the symptoms described in her impact statement or has continued to experience them. She has not shown that she had an impairment at the relevant time.

66. Further, and in the alternative, if the claimant did have an impairment at that time, then she has failed to show at the relevant time (February to March 2020) that it was likely to be more than a temporary reaction, and it was likely to last 12 months or more.

67. Further and in the alternative, I find that in the period 3 February to 19 March 2020 the respondent has shown that it did not know and could not reasonably be expected to know that the claimant had a disability.

68. In this period it seemed to Ms Ferreira that the claimant was very upset about the loss of her motorbike, was reluctant to comply with the respondent's policy requirement to report daily and was worried about the AWOL letters which she said caused her anxiety, but that such a reaction would be short-term and that the claimant had not said anything as to lead her to suspect that she had a mental health condition likely to last 12 months or more.

69. The information before the respondent was contained

- in the telephone calls of 3 and 4 February 2020 to Lee
- the correspondence sent by the claimant on 17 February
- the fit notes
- the information given to Ms Ferreira on 20 February 2020

70. The acts of discrimination in respect of which the respondent's knowledge is relevant are the AWOL letters, the dismissal and the application of the PCPs. These PCPs include the requirement to telephone each morning during

sickness absence, issuing the AWOL letters, an overtime requirement, a requirement to drive a pallet stacker, a requirement to work in a warehouse.

71. I infer that on the 3 and 4 of February 2020 the claimant gave Lee much the same information as she sets out in her first letter to the respondent, which paints the picture that the claimant is having to take a day off not because of any illness or mental impairment, but because she was upset at the loss of her bike and needed time to sort out the administrative processes with the police and the insurance company which she found stressful. In other words, a reaction to adverse circumstances. This was the only information that the respondent had before 17 February 2020. All the AWOL letters were issued between 4 February and 11 February 2020 at a time when the respondent had no knowledge of a disability within the meaning of the act and had taken all reasonable steps at that time to enquire about the claimant's absence.
72. The requirement to telephone on a daily basis under the sickness absence policy was only imposed on the claimant in the period 3 February 2022 to 17 February 2020. In that period the respondent had no knowledge of a disability within the meaning of the Act and had taken all reasonable steps at that time to enquire about the claimant's absence. In that period the only information they had came out of the telephone calls to Lee.
73. In her ET1 the claimant contends, among other things, that her dismissal by reason of failing to satisfy the respondent during the probationary period related, in some way to overtime, warehouse work and driving a pallet truck.

The correspondence from the claimant indicates that she was doing overtime for financial reasons. There is no evidence before me, that the claimant had raised any objection at any time before her dismissal relating to overtime or that her condition prevented her doing it or impacted on her performance. There is no indication in the email of 25 February 2020 or otherwise, that she had raised the matter of overtime with Ms Ferreira on 20 February 2020.

It was the respondent's unchallenged evidence that the claimant was employed as a general warehouse operative. Although I find that at the meeting on 20 February 2020 she asked to move lines within the warehouse because of her relationship with M, there is no evidence that she told the respondent then or at any time before her dismissal, or at all, that she was unable to carry out warehouse work or to drive a pallet truck because of her mental condition, or that the condition impacted on her performance. In his letter of 4 November 2020 the GP says he knows no reason why her medication at that low dosage might render her unsafe to drive a pallet truck.

I accept the general recall of Ms Ferreira about the meeting on 20 February 2020, to the extent that as an experienced HR professional had the claimant told her or led her to suspect that something as serious as a breakdown had occurred, she would have remembered this and she does not remember the claimant telling her this. The impression that Ms Ferreira had been given by the claimant was that the claimant had been distressed by the loss of bike, stressed by the insurance and police processes and requirements of the company's

sickness policy, but that this was only a temporary reaction and not a disability likely to affect the claimant for the future.

74. The fit notes merely refer to 'stress' and expire on 3 March 2020. There were no conditions at all relating to the claimant's return to work in the final fit note and the claimant was presenting as fit to return. Nothing in the fit notes could have put the respondent on notice of a disability likely to last 12 months or more.
75. I conclude in the period from 3 February 2020 until the claimant's dismissal the respondent had no knowledge of a disability within the meaning of the Act likely to last 12 months or more and had taken all reasonable steps at that time to enquire about the claimant's absence and health.
76. In the circumstances, the claimant has failed to show that she has a disability within the meaning of the Act. Further, and in the alternative the respondent has established that it had no knowledge of such a disability and could not reasonably have been expected to know that the claimant had a disability.
77. In the circumstances I strike out the claims as having no reasonable prospect of success under Rule 37 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

Employment Judge O'Neill

11 February 2022