



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms S Jama-Yusuf

v

LHR Airports Limited

Heard at: Watford

On: 21, 22, 25,
26 (in chambers) and 27 April 2022

Before: Employment Judge Manley
Members: Ms Brosnan
Mr Sutton

Appearances

For the Claimant: In person (with a friend for some of the days)
For the Respondent: Mr Salter, Counsel

JUDGMENT

1. The unfair dismissal complaint is confirmed as dismissed as the claimant did not have two years' service.
2. Those complaints of disability discrimination which occurred before 11 November 2018 have been presented out of time, do not amount to conduct extending over a period and it is not just and equitable to extend time to allow those claims to proceed.
3. The complaint that the dismissal was an act of direct disability discrimination and victimisation was presented in time but there was no such discrimination or victimisation.
4. Parts of the failure in the duty to make reasonable adjustments claim are out of time but some may amount to conduct extending over a period so as to bring them in time. The claim that there was a failure to make reasonable adjustments fails on the evidence before the tribunal.
5. The claimant's time barred complaints of disability discrimination which include some of the failure to make reasonable adjustments, direct discrimination, harassment and victimisation would have failed in any event if they had been allowed to proceed.
6. All complaints brought under the Equality Act 2010 fail and are dismissed.

REASONS

Introduction and issues

1. A list of issues which includes the legal tests which we have to apply to the facts was agreed in this case. A couple of additions were made at the commencement of the hearing by inserting the dates of the protected acts as the grievances of 28 June and 11 August 2018. The claimant was also asked to clarify what detriments she was alleging for the victimisation claim. She said they were as follows:- the dismissal; the refusal by Ms Kaur to investigate the first part of the first grievance and pressurising her to withdraw her first grievance both of which are said to have occurred on 29 June 2018.
2. As amended, the issues for this tribunal to determine were as follows:

Disability discrimination

1. Whether Respondent had knowledge of disability

- 1.1 Did the Respondent know, or could reasonably have been expected to know, that the Claimant had an impairment at the material time, namely symptoms associated with dyspraxia, dyscalculia, and dysgraphia?
- 1.2 Did the Respondent know, or could reasonably have been expected to know, that the Claimant had dyslexia before 27 January 2017?
- 1.3 Did the Respondent know, or could reasonably have been expected to know, that the Claimant's impairment had an adverse effect on her ability to carry out normal day to day activities?
- 1.4 Did the Respondent know, or could reasonably have been expected to know, that the effect of the Claimant's impairment on her ability to carry out normal day to day activities was substantial?
- 1.5 Did the Respondent know, or could reasonably have been expected to know, that the effect of the Claimant's impairment on her ability to carry out normal day to day activities had lasted for a period of at least 12 months or was likely to do so?

2. Whether claims are in time

- 2.1 Has the Claimant brought her claims of discrimination within the time limit set by Section 123(1) of the Equality Act 2010? This gives rise to the following sub-issues:

- 2.1.1 What was the date of the act to which the complaint relates?
- 2.1.2 Was the act to which the complaint relates an element of conduct extending over a period? If so, when did that period end?
- 2.1.3 Insofar as the complaint relates to a failure to do something, when did the Respondent decide on it?
- 2.2 If not, is it just and equitable for the Employment Tribunal to extend time for the claim pursuant to section 123(1)(b) of the Equality Act 2010?

Direct discrimination: Equality Act 2010 s13

- 3. The Claimant alleges that her dismissal was an act of disability discrimination.
- 4. The Claimant alleges that Paul Sibley did the following things which constituted direct disability discrimination:
 - 4.1 placed her on restricted security duties (dates not provided by the Claimant)
 - 4.2 took 8 weeks to re-train her; and
 - 4.3 asked her questions about the quality of her work at any time and in public (dates not provided by the Claimant).
- 5. The Claimant alleges that Mandeep Kaur did the following things which constituted direct disability discrimination:
 - 5.1 applied a 28-day time limit for her to bring a grievance, but did not apply the same time limit to her manager for bringing a grievance against her.

6. Whether treatment was less favourable

- 6.1 In doing the acts complained of, did the Respondent treat the Claimant less favourably than it treated or would treat others in comparable circumstances? The Claimant relies upon a hypothetical comparator, a colleague without dyslexia.
- 6.2 If so, was there any material difference between the circumstances relating to the Claimant and others?

7. Reason for less favourable treatment

- 7.1 If the Respondent treated the Claimant less favourably, was this because of the Claimant's disability?

Disability related harassment: Equality Act 2010 s26

8. The Claimant alleges that the Respondent engaged in the following conduct which constituted disability related harassment:

8.1 a training lady called Rebecca Kendrick-White hit the Claimant over the head and pulled her hijab in front of staff and passengers in concourse south on 19 May 2018.

9. **Whether incidents/events complained of occurred**

9.1 Did Rebecca Kendrick-White hit the Claimant over the head and pull her hijab on 19 May 2018?

9.2 Did the Claimant raise any complaint/grievance about this at the time?

10. **Whether conduct related to disability**

10.1 Was the conduct in question related to the Claimant's disability?

11. **Whether conduct unwanted**

11.1 Was the conduct in question unwanted?

12. **Purpose/effect of conduct**

12.1 Did the conduct in question have the purpose or effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

Duty to make reasonable adjustments: Equality Act 2010 s21

13. The Claimant alleges that the Respondent (in particular the Claimant's line manager, Sarah Stolarski) failed to comply with a duty to make reasonable adjustments in the following ways:

13.1 training should have been given within 1 week of starting the job (but was only given within a period of 6 to 8 weeks);

13.2 the Claimant should have had an additional person sitting next to her for support (in addition to the trainer);

13.3 questions to the Claimant to test the quality of her work should have been done in private (and not in front of colleagues and passengers); and

13.4 the manager should have sat with the Claimant to provide one-to-one support and guidance.

14. by failing to provide her with specialist or adapted equipment, such as adapted keyboards, large print or Braille materials or assisting listening devices.

15. **Whether Respondent had knowledge of request**
16. **Did the Claimant request that these adjustments were made?**
17. **Did the Respondent have any actual or implied knowledge that the Claimant needed such adjustments made?**
18. **Whether Claimant disadvantaged by a PCP**
 - 18.1 Did the Respondent apply a provision, criteria or practice (PCP), namely the requirement to satisfactory to complete training?
 - 18.2 If so, did the PCP in question put the Claimant at a substantial disadvantage in comparison with persons who are not disabled?
19. **Whether Respondent had knowledge of disadvantage caused by PCP**
 - 19.1 Did the Respondent know, or could reasonably have been expected to know, that the PCP in question put the Claimant at a substantial disadvantage, in comparison with persons who are not disabled, in relation to employment by the Respondent?
20. **Whether Respondent took reasonable steps to avoid disadvantage caused by PCP**
 - 20.1 Did the Respondent take such steps as it was reasonable to have to take to avoid the disadvantage caused by the PCP?
21. **Whether Claimant disadvantaged by absence of auxiliary aid**
 - 21.1 Would the Claimant have been put at a substantial disadvantage in comparison with persons who are not disabled if an auxiliary aid were not provided?
22. **Whether Respondent had knowledge of disadvantage caused by absence of auxiliary aid**
 - 22.1 Did the Respondent know, or could the Respondent reasonably have been expected to know that, but for the provision of an auxiliary aid, the Claimant would be put at a substantial disadvantage, in comparison with persons who are not disabled, in relation to employment by the Respondent?
23. **Whether Respondent took reasonable steps to provide auxiliary aid**
 - 23.1 Did the Respondent take such steps as it was reasonable to have to take to provide the auxiliary aid?]

Victimisation: Equality Act 2010 s27

24. The Claimant alleges that the Respondent did the following which constituted victimisation:
 - 24.1 treated the Claimant differently as a result of the grievances that she raised.
25. **Whether Claimant did a protected act**
 - 25.1 Did the Claimant do a protected act by raising a grievance?
26. **Whether Claimant subjected to a detriment**
 - 26.1 Did the Respondent treat the Claimant differently as a result of the Claimant raising a grievance on 28 June 2018 and 11 August 2018?
 - 26.2 Did the act complained of constitute a detriment to the Claimant?
27. **Reason for detrimental treatment**
 - 27.1 If so, did the Respondent subject the Claimant to a detriment because the Claimant had done a protected act or because the Respondent believed the Claimant had done or may do a protected act?
28. **Whether claim in time**
 - 28.1 Has the Claimant brought her claim within the time limit set by Section 123(1) of the Equality Act 2010?
 - 28.2 If not, is it just and equitable for the Employment Tribunal to extend time for the this claim under section 123(1)(b) of the Equality Act 2010?
29. **Remedy**
 - 29.1 What is the Claimant entitled to if she succeeds in her claim?

Hearing

3. The hearing was an attended hearing at the tribunal apart from the deliberation day. Because we were aware that the claimant was a litigant in person and has dyslexia, we tried to ensure that the hearing proceeded at an appropriate speed with breaks and several explanations of the process. There were gaps between witnesses' evidence so the claimant could prepare.
4. Although listed for nine days the claimant had no other witnesses and we gave oral judgment on the sixth day.
5. We heard from eight witnesses for the respondent, all of whom had prepared statements. They are as follows:-

- Ms Stolarski, the claimant's line manager;
 - Ms Kendrick-White, a Security Trainer,
 - Ms Young, a Security Trainer,
 - Mr Sibley, a Security Manager,
 - Mr Heading, a Security Manager,
 - Mr Chohan, a Security Assurance Manager (at the time),
 - Ms Leahy, Director of Airport Operations,
 - Ms Kaur, an Employment Relations Advisor.
6. The claimant also had a witness statement and gave evidence.
 7. The bundle of documents was over 600 pages and we accepted a couple of extra pages from the claimant which were a photograph and a floorplan. We also had a chronology, a cast list and an opening note with a suggested timetable which we discussed and agreed at the commencement of the hearing.

The facts

8. These then are the relevant facts for the determination of the issues. As is often the case in hearings, we heard some other pieces of information but the tribunal must focus its attention on those which are relevant to the issues as set out above.
9. The claimant commenced employment on 16 January 2017 as a Security Officer in Terminal 5 at Heathrow Airport. LHR Airports Limited is a substantial employer with many thousand employees. They have several policies and procedures as one would normally expect for a large employer. These included a Disciplinary Policy, a Code of Professional Conduct Policy, A Dignity at Work Policy and a Grievance and Mediation Policy. There is also a very active trade union.
10. Security Officers carry out a safety critical role. They have a range of duties through the security process for passengers and their luggage which includes checking for prohibited items, searching people and bags and rejecting prohibited items. Their work is in line with the Department for Transport and the respondent's own standards.
11. The claimant told us that she had worked at Heathrow for many years and had tried several times to be appointed as a Security Officer before she was eventually successful. The initial training for Security Officers lasts about four weeks. There are seven days of classroom-based learning followed by training in the terminal. The claimant passed her initial training receiving good scores on some areas. A note at page 147 of the bundle shows that one of the trainers was made aware of the claimant's dyslexia. It records "*We reminded Shukri to raise her hands so words can be rephrased.*" None of the witnesses at the tribunal hearing wrote that note and they were not aware who did.
12. The training records have a place for a signature by the trainer and the trainee to say they are satisfied. In the case of the trainee, they sign to say that they

are confident that they can undertake the disciplines to the necessary standard. There is also a monthly one-hour training session on Threat Image Recognition as well as regular two-day refresher courses including Screen Reading. Security Managers may also identify, through ad hoc questions and observations, where specific individual training is needed and that employee is placed on restrictions until they have had appropriate retraining on that particular aspect. This limits the amount of overtime an employee can carry out.

13. The respondent has conceded it had knowledge of dyslexia from 27 January 2017. Whether it is from the note at page 147 or not we do not know, but that is the date that it is accepted. The tribunal accepts that witnesses who attended this hearing did not have knowledge of the claimant's dyslexia until it was raised in the disciplinary matter which we come to.
14. On 14 February 2017 the claimant completed her initial training course. It is agreed that she scored well on some aspects and signed the appropriate records.
15. The claimant had a good attendance record thereafter and she had no disciplinary record. There were no issues of any significance until the following year.
16. On 19 May 2018 the claimant alleges that Ms Kendrick-White, who was a Security Trainer, hit her over the head and pulled her hijab in front of staff and passengers. The tribunal had to consider whether this did happen, given that it was disputed by Ms Kendrick-White. To help us decide what occurred, we first considered when this allegation was made by the claimant. As far as we can see, it was first recorded at a case management hearing for this tribunal case. The claimant says it was mentioned in what she says Ms Finlay called "chit chat", when she was investigating a grievance raised by Mr Sibley but it does not appear in any of those notes. The tribunal finds that it is most likely that this was first raised after the employment tribunal claim was made. It does not appear in the claimant's written grievances or any follow-up emails nor have we seen it in notes of various discussions and meetings.
17. We heard versions of what happened on that day from Ms Kendrick-White, from Ms Young as well as the claimant. It is not in dispute that the two trainers asked questions of the claimant about screen reading. They say she approached them and asked whether she would have to re-sit the screen reading if she failed the training. The claimant disputes that she approached them and says rather that they came to her. This is not a particularly important fact to find given that our duty is to find whether the specific allegation is made out. In any event, Ms Young was concerned about the claimant's answers on screen reading although she said that it was a friendly discussion. She went to security managers with her concerns because it was their role to consider whether restrictions were necessary. It seems the claimant was placed on restrictions as her later grievance states so. Ms Kendrick-White and Ms Young deny any physical contact at all and specifically any hitting or pulling the claimant's headscarf.

18. The claimant now says that she was physically assaulted, and in her witness statement to the tribunal, she added that Ms Kendrick-White held her hand. That is also disputed by Ms Kendrick-White and Ms Young. The tribunal find that this did not occur. If it had, the claimant would have mentioned it before in one of her grievance communications, in the follow-up meetings and emails. Her evidence on this point has not been consistent. The tribunal find this incident did not occur in the way described by the claimant.
19. On 24 June 2018 there was an incident with Mr Sibley which, as we understand it, happened shortly after restrictions were lifted for the claimant. The facts are that the claimant called Mr Sibley who was doing meal relief duty as security manager because there was an explosives activation. Mr Sibley's evidence was that his first concern was that the machine the claimant had been using was on standby. A number of different explanations have been given by the claimant for why this was so. In his witness statement between paragraphs 6 to 8, which I will not read out now, Mr Sibley went on to describe a number of steps that he saw the claimant take to be unsatisfactory. For instance, she was not swabbing the whole bag, she was leaving large electrical items un-swabbed and not looking for other prohibited items and so on. He spoke to the claimant away from passengers to discuss his concerns and informed her he was placing her on restrictions. His evidence is that she became angry and stated she would not be able to do overtime. Mr Sibley completed the relevant form for retraining and it appears at 239 and 240 of the document bundle. The claimant's evidence is that Mr Sibley became angry with her but she does not dispute most of what he says about how she was carrying out her job.
20. On 28 June 2018 the claimant raised a complaint and this appears at 247 of the document bundle. She told us at the hearing that she did not have trade union assistance to draft this complaint. The claimant wrote that the complaint was in two parts. The first part of the complaint related to the conduct of two female trainers on 19 May, in part as described above. This as we know was Ms Kendrick-White and Ms Young. In summary, the claimant said they had approached her, they had given false information about her not being good enough and that she had been placed on restrictions. She said she had been targeted and bullied and that it was discriminatory and racist as she had suffered financially for more than five weeks. As stated above, she made no mention there either of any physical contact or indeed of any condition of dyslexia.
21. The second part of that complaint was about the conduct of Mr Sibley and his decision to place her on restricted duties on 24 June 2018. Again, in summary, the claimant explained why the machine was on standby which is a slightly different explanation to that she gave in the hearing where she said, perhaps for the first time, that other officers had asked her to do this because of the noise it was making. The claimant said in her grievance that Mr Sibley was very angry, said she was not a good officer and put her on restrictions which would cause her to lose overtime. There was no mention of racism or discrimination in that part of the grievance nor again any reference to dyslexia.

22. On 29 June 2018 there was an informal meeting between the claimant and Ms Kaur after the complaint had been made. The claimant was told that the first part of her complaint was out of time because the 28-day time limit in the policy was over. Ms Kaur's evidence was that the claimant said she would drop the complaint. The claimant says that Ms Kaur put pressure on her to drop the complaint but the tribunal find that no such pressure was put on the claimant as is clear from Ms Kaur's email of 3 July, which appears to 243 of the bundle makes clear. Ms Kaur in that email said what was discussed on 29 June which included explaining the policy, the 28-day time limit, about the claimant wanting overtime, she offered mediation and she referred to the claimant having said she would drop the grievance.
23. The claimant replied to that email the same day not taking any issue with Ms Kaur's summary of what had been discussed but repeating her allegations about Mr Sibley. She rejected mediation and raised concerns about HR. She also said she would get legal advice and spoken to buddies, trade union and some managers and they all agreed that it was not fair. She made it clear that she wanted the grievance to continue. The tribunal finds that Ms Kaur put no pressure on the claimant to withdraw her complaint and gave her all the correct information. Again, the claimant made no mention of dyslexia being relevant to any of this. Ms Kaur's decision for the rejection of the first part was within the policy and she found there was no reason to extend time.
24. On 3 July the claimant repeated some of her complaints in another email, this is at page 250 of the bundle. At the hearing she told us that she did have trade union assistance for this document, but there is still no mention of dyslexia in that document. Nor is there any mention of discrimination, racism or, indeed, the allegation about Ms Kendrick-White grabbing or hitting her.
25. The claimant's explanation in the hearing when asked about mentioning discrimination in the first grievance was, she said, that an un-named trade union representative had suggested this to her. That does not adequately explain the contents of the documents because she said the first one that she did, which is the one which did include racism and discrimination, was one she told us she did without such assistance.
26. On 4 July 2018 the claimant was speaking to another security officer, initials NE, and it is alleged she made a comment to the effect that she would play the race card to avoid trouble. Another security officer, MN, said that he overheard this comment and he later mentioned this in an email on 15 July, (page 272). When asked about it during the investigations which followed, that he spoke directly to the claimant about the comment and he challenged her about it. More details were given during Mr Sibley's complaint and the claimant's disciplinary investigation which we will come to.
27. On 5 July the claimant did have some re-training with Ms Kendrick-White and she advised that the claimant should be kept on restrictions. The claimant made no mention of Ms Kendrick-White having treated in the way she subsequently alleged in May.

28. On 11 July Mr Sibley raised a grievance against the claimant (page 253). In summary, he said he had heard that the claimant had said that he (Mr Sibley) was a racist. He went on to say how this upset him. This is not quite the same allegation as was later made against the claimant which is that she said she would play the race card. In any event, that grievance of Mr Sibley was allowed to proceed as it was clearly within the 28 days. For some reason the claimant seems to be under the impression that it was not within 28 days but we are unclear why she believes that.
29. Between 23 and 25 July 2018 the claimant sent emails to Tom Willis who was the Security Director. These include threats of legal action and says "*My case will be heard even if I write to your boss and get my solicitor*".
30. On 3 August 2018 Mr Purser, who was the Passenger Experience Manager, was appointed to deal with the claimant's grievance against Mr Sibley, that is the second part of the first grievance. The claimant was interviewed on 18 July and Mr Sibley on 3 August. The claimant was informed of the outcome and she was told that it was not upheld. In short, Mr Purser took the view that there was no evidence that Mr Sibley had acted in any other way than in line with his security manager's duties. The claimant was told that she had 12 days to appeal (take it to a second stage) which was in line with the policy. The claimant did not appeal.
31. Also, on that date, 3 August 2018, the claimant was referred for re-training by Mr Heading. There is a form for this which was submitted later that month (page 284). This is an incident that the claimant later complained about. It arose from Mr Heading being asked by a passenger for information as they were concerned that all three of their bags had been searched. He went to observe the security line and saw that the claimant was on the x-ray screen reader. His witness statement, paragraphs 4 to 5, set out what he found. Amongst other things, the claimant was stopping the majority of trays, she was using erratic enhancements and not using them correctly. He went to check on the Security Management System and saw that the claimant had enhanced 74 out of 82 bags which was much higher than would be expected. He noted that she had also not asked for a second opinion in spite of the fact that he had been present for some of the time. He then spoke to her on a closed lane about his observations and told her that he would be removing her from those duties and referring her for further training. The claimant was concerned that Mr Heading was standing very close to her, which he does not accept, but she accepts that he told her she was not doing her job properly and she became upset.
32. On 11 August the claimant raised a grievance about the incident with Mr Heading (page 280). In essence, she complained that his actions were unfair and similar to other managers. There is nothing in that grievance about race or discrimination or dyslexia. That grievance proceeded to be dealt with by Vicky Hardy, who was the Security Manager Shift Support, with the claimant attending a hearing on 10 September with a trade union representative. Mr Heading was spoken to the same day.

33. In the meantime, MM was spoken to about Mr Sibley's grievance against the claimant, which was to be dealt with by Ms Finlay, who was Terminal Security Manager.
34. On 14 September the claimant was informed of the outcome of her complaint against Mr Heading (pages 311 to 313). This is a detailed outcome by Ms Hardy, it summarised what the claimant had said, what Mr Heading had said and found no actions by Mr Heading to be criticised. She found there was no evidence that the claimant had not been treated with respect. That letter contains this short paragraph at page 313:

“In summary I have not found the allegations of intimidation or bullying to be proven. It is my belief that Chris was conducting his role as a Zonal Security Manager to the required standard and that you were treated in a manner consistent with that of any other security officer. You have made some serious allegations of bullying and intimidation which have not been substantiated. Your motivation behind making these allegations causes me concern. This may be looked into further.”

35. In the meantime, Ms Finlay continued to investigate Mr Sibley's grievance against the claimant. On 27 September 2019 she produced an investigation report (pages 332 to 334). She concluded that the claimant had made the comments about playing the race card and had brought a vexatious grievance against Mr Sibley. She set out details of the witnesses and paperwork she looked at. She stated that the CCTV of the interaction between Mr Sibley and the claimant was available on request. There is no evidence before the tribunal that the CCTV was requested at the time in this or any other incident. Mr Sibley was informed of the outcome of his grievance which was upheld (pages 336 and 337) and that action would be taken.
36. This led to the claimant's suspension at a meeting on 28 September 2018. She attended with a trade union representative and was given a letter setting out the reasons for suspension:

“The decision to suspend was made following the closure of the grievance against you where it is alleged that you potentially submitted a vexatious grievance against managers and that you stated you would use the race card if you got into trouble.”

37. There was then a fact-finding disciplinary investigation meeting with the claimant on 8 October. She attended with her trade union representative, Jason Matthews, and there are detailed notes of what was discussed (pages 351 to 361). The tribunal has read that discussion and note that the claimant was not always consistent in her replies. For instance, at page 357, she said that she had never said racist but, as we know, that was said in the first part of the first grievance. When asked why she had written that, she said that she did not mean it like that. She said that she had felt there was discrimination but not that it was racist. She did not clearly deny the making the race card comment.

38. On 17 October 2018 the investigation report was completed. Again, this is a very detailed document (pages 362 to 377). It was prepared by Mr Garrett. He set out all the interviews in the various grievances and, in summary, he recommended disciplinary action.
39. On the basis of that very detailed report the claimant was invited to a disciplinary hearing (page 380). The charges were said to be as follows:

“Deliberately making a false statement or dishonest conduct in relation to the company, its customers and employee;

Deliberately vexatious and/or unreasonable complaints and grievances, making serial grievances without foundation,

Bullying and/or harassment towards a fellow employee, customer or supplier”.
40. These were said to be breaches of the company’s Disciplinary Policy and Code of Professional Conduct and Dignity at Work Policy.
41. The claimant still had the assistance of the trade union. A trade union representative, Mr Wood, informed Mr Chohan, who was to deal with the disciplinary hearing, that the claimant was dyslexic and the hearing was rescheduled to a later date.
42. The disciplinary hearing proceeded on 8 November 2018. Again, there are notes (pages 392 to 398). The hearing was led by Mr Chohan; the claimant was represented by Mr Wood who also provided a statement. Mr Chohan decided to adjourn to speak to MN about concerns that had been raised. On 14 November he did speak to MN. There is a detailed account which appears at page 400 of the bundle, which is consistent with what we have said earlier about MN’s recollection of what the claimant had said about playing the race card.
43. On 29 November 2018 the disciplinary hearing was rescheduled. Mr Wood attended and there was also a trade union notetaker in attendance. Again, there are notes between 410 and 419. This was a detailed hearing. It appears from the notes that it was about three hours long. There was then an adjournment for Mr Chohan to consider matters and on 14 December the hearing was rescheduled and the claimant was told that she was to be dismissed. Page 423 of the bundle was read aloud to the claimant; this was a summary of Mr Chohan’s decision. It went through the decision being founded on the allegations being proven, that he had taken her employment record into account and found dismissal to be appropriate given that there was gross misconduct and a breach of trust and confidence. The tribunal finds that there was no connection between the claimant’s dyslexia and the reason for dismissal.
44. This was followed up by a disciplinary outcome letter on 20 December 2018 (pages 424 to 430). This is a very long and very detailed letter. It goes through a thorough examination of all the evidence and Mr Chohan’s findings. It set out what was said at the hearing and what investigation was carried out

by himself and by others. Mr Chohan took no account of the first part of the grievance, that is the incident with Ms Kendrick-White and Ms Young in May. He concentrated firmly on complaints against Mr Sibley and Mr Heading and the comment about the race card.

45. There is reference to the claimant's dyslexia. At 425 he says this:

"Whilst I understand you are dyslexic, in discussing the incident in the hearing with me you could clearly describe what happened and how you conducted a bag search. Therefore I do not believe you have an issue getting your words across verbally. In addition to this your training records demonstrate you have been consistently able to answer competency based questions on several occasions."

46. Part of his conclusion reads as follows:

"I also believe we have a duty to protect other colleagues from false accusations. By making the comment you would use the race card links in with Dignity at Work policy. Your behaviour on multiple instances has been malicious when submitting grievances setting managers up to fail with false allegations of bullying, intimidation and discrimination. I have also considered the fact you are dyslexic however I do not believe this is justification for the false allegations you made. In addition to this you emailed the Director of Security Tom Willis alleging a cover up, threatened to write to his boss and threatened legal action all without being substantiated. Throughout this process I have seen no acknowledgement or remorse from you."

47. The claimant's dismissal had, of course, already taken effect as it was a summary dismissal.

48. On 31 December the claimant appealed the outcome. In fact, Mr Stephenson the trade union branch chairman submitted the appeal on her behalf. At page 432 the points of appeal are said to be as follows:

"1. There are points of process that she feels have been overlooked and would like an opportunity to seek clarification.

2 She feels there is still a lot of misunderstanding as to her intentions and her motivation.

3 She recognises that a lot has been said over a long period of time and feels a lot of her points have been lost in translation."

49. There was then an appeal hearing on 18 February 2018. The claimant was accompanied by a trade union representative and Ms Leahy was the officer dealing with the matter.

50. The tribunal have read the appeal hearing notes and can see no clear denial by the claimant of having made the race card comment. There is no reference to her suggesting any connection between the dyslexia and what happened to her.

51. On 7 March 2018 the appeal outcome was sent to the claimant and her appeal was unsuccessful. By then the claimant had already approached ACAS and she presented her claim to the tribunal on 11 March 2019. There followed case management after the response was presented. There has been a previous finding by the tribunal that the claimant was a person with a disability under the Equality Act.

The law

52. For the disability discrimination claim, the relevant sections of the Equality Act are s13 for the direct discrimination, ss20 and 21 for the reasonable adjustments claim, s26 for the harassment claim and s27 for the victimisation claim. The relevant parts read as follows:-

13 *Direct discrimination*

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

(2) -.

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) -

- (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.*

26 *Harassment*

(1) *A person (A) harasses another (B) if—*

(a) *A engages in unwanted conduct related to a relevant protected characteristic, and*

(b) *the conduct has the purpose or effect of—*

(i) *violating B's dignity, or*

(ii) *creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

(2) -

(3) -

(4) *In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*

(a) *the perception of B;*

(b) *the other circumstances of the case;*

(c) *whether it is reasonable for the conduct to have that effect.*

(5) *The relevant protected characteristics are—*

- *disability;*

27 *Victimisation*

(1) *A person (A) victimises another person (B) if A subjects B to a detriment because—*

(a) *B does a protected act, or*

(b) *A believes that B has done, or may do, a protected act.*

(2) *Each of the following is a protected act—*

(a) *bringing proceedings under this Act;*

(b) *giving evidence or information in connection with proceedings under this Act;*

(c) *doing any other thing for the purposes of or in connection with this Act;*

- (d) *making an allegation (whether or not express) that A or another person has contravened this Act.*
- (3) *Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*
- (4) *This section applies only where the person subjected to a detriment is an individual.*
- (5) *The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*

53. In applying the sections quoted above, the tribunal must also apply s.136 which sets out how to apply the burden of proof in all discrimination matters. S.123 provides a time limit of three months from the date of the act complained of, unless there is conduct extending over a period. In the appropriate circumstances the tribunal can extend time on a just and equitable basis. The relevant parts read as follows:-

123 *Time limits*

- (1) *Proceedings on a complaint within section 120 may not be brought after the end of—*
 - (a) *the period of 3 months starting with the date of the act to which the complaint relates, or*
 - (b) *such other period as the employment tribunal thinks just and equitable.*
- (2) -
- (3) *For the purposes of this section—*
 - (a) *conduct extending over a period is to be treated as done at the end of the period;*
 - (b) *failure to do something is to be treated as occurring when the person in question decided on it.*
- (4) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*
 - (a) *when P does an act inconsistent with doing it, or*
 - (b) *if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.*

136 *Burden of proof*

- (1) *This section applies to any proceedings relating to a contravention of this Act.*
- (2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
- (3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*
- (4) -
- (5) -
- (6) *A reference to the court includes a reference to—*
 - (a) *an employment tribunal;*

56. Mr Salter, for the respondent, had prepared written submissions which were given to the claimant to read. She took time to look at those before she made her submissions. The respondent, in summary, says that the claimant's case is not made out on any ground, the facts do not support it and large parts of the claim are out of time.

57. The claimant asked the tribunal to find in her favour believing she has been treated unfairly and that the respondent was always aware of her dyslexia and that lessons should be learned.

Conclusions

58. In the oral judgment, I provided our conclusions by reference to the list of issues. They did not all need to be read because many are answered on the basis of our findings of fact.

59. The first question was whether the respondent had knowledge of disability: **Issue 1.1** reads "*Did the respondent know or could reasonably have been expected to know that the claimant had an impairment at the material time, namely symptoms associated with dyspraxia, dyscalculia and dysgraphia?*". **Issue 1.2** reads "*Did the respondent know or could reasonably have been expected to know that the claimant had dyslexia before 27 January 2017?*". Our finding is that there is no evidence that the respondent knew before the note at page 147 which we have assumed is 27 January 2017 as it was during training. That is the date that the respondent knew of the claimant's dyslexia.

60. **Issues 1.3, 1.4 and 1.5** deal further with the question of whether the claimant was disabled and the respondent's knowledge. Our answer to this is relatively straightforward. It is that the respondent did have knowledge of the condition but were unaware of any impact of the condition on the claimant's work. Nor did the claimant tell us there was any such impact.

61. The next section of the issues is whether the claims are in time. **Issue 2.1.** reads "*Has the claimant brought her claims of discrimination within the time limits set by s.123 of the Equality Act 2010?*" The sub issues are as follows: **2.1.1** "*What was the date of the act to which the complaint relates?*" The dates are various dates between 19 May 2018 and dismissal on 14 December 2018.
62. **Issue 2.1.2** reads "*Was the act to which the complaint relates an element of conduct extending over a period? If so, when did that period end?*" The tribunal finds that the claimant cannot show conduct extending over a period. There are different managers dealing with different aspects of the claimant's and Mr Sibley's concerns. Different managers dealt with all the disciplinary and grievance matters and the claimant has not shown conduct extending over a period.
63. **Issue 2.1.3** asks "*Insofar as the complaint relates to a failure to do something, when did the respondent decide on it?*" This can only relate to the failure to make reasonable adjustments, the suggestions being those at issues 13.2, 13.4 and 14. It is not clear to the tribunal when these failures are alleged to have happened so we take it as being the dates are above between May 2018 and December 2018.
64. **Issue 2.2** asks "*If not, is it just and equitable for the employment tribunal to extend time for the claim pursuant to s.123 of the Equality Act?*" The tribunal finds it would not be just and equitable to allow the complaints about individual acts allegedly having taken place before November 2018 to proceed. The claimant had trade union assistance throughout, was aware of action she could take as she referred to in her various emails, especially the one to Mr Willis. The claimant has provided no reasons for a late claim. Apart from dismissal and the failure to make reasonable adjustments, all of the matters are out of time.
65. However, even if we are wrong about that, and because we have heard evidence about all matters, we have determined them in any event, as if they had been made in time.
66. Turning then to direct disability discrimination, **issues 3, 4 and 5** set out the claimant's claims. First, she claims that Mr Sibley did three things which are direct discrimination.
67. At **issue 4.1** is that he placed her on restricted security duties. The tribunal accepts that it is not in dispute that he did place her on restrictions on 24 June 2018.
68. **Issue 4.2** reads "*Took 8 weeks to retrain her*". The tribunal finds that Mr Sibley has no responsibility for the length of time it took to retrain the claimant. The tribunal is not entirely clear how long it did take. It seemed to be that the claimant was on restrictions and then back at work to be placed again on restrictions by different managers for different reasons. The tribunal do not think there were any particular delays.

69. **Issue 4.3** reads “*Asked her questions about the quality of her work at any time and in public*”. This appears to relate to 24 June 2018. The tribunal has found that Mr Sibley did not talk to the claimant in public and the claimant has only mentioned one incident with Mr Sibley.
70. The next direct disability claim is **Issue 5 and 5.1**. The claimant alleges that Ms Kaur “*Applied a 28-day time limit for her to bring a grievance but did not apply the same time limit to her manager for bringing a grievance against her.*” Ms Kaur did apply the time limit as that part of the claimant’s first grievance was outside the 28 days; Mr Sibley’ was not.
71. Where the tribunal has found that something did occur, the claimant has not shown facts from which we could conclude that it was less favourable treatment because of her dyslexia. In brief, none of those matters were said to have any connection to the claimant’s dyslexia. The claimant did not suggest they did, nor is there any evidence of any connection.
72. So, the answer to **Issues 6.1 and 6.2**. is that there is simply no less favourable treatment of the claimant as compared to a colleague without dyslexia. This also answers **Issues 7 and 7.1**. The treatment was not related to the claimant’s dyslexia.
73. **Issues 8 and 8.1** sets out the disability related harassment allegation that Ms Kendrick-White hit the claimant over the head and pulled her hijab on 19 May 2018. The tribunal has found this did not happen. Even if it had, there was no evidence whatsoever that it would have been connected to the claimant’s dyslexia. **Issue 9.1** repeats the question at 8.1
74. **Issue 9.1 2** asks “*Did the claimant raise any complaint, grievance at the time?*” The claimant did not raise this allegation at the time or in her later grievance or elsewhere. It seems likely that she did not raise it until after she issued tribunal proceedings.
75. There is therefore no need to answer the other questions between **Issues 10 and 12**. The incident did not occur.
76. Turning then to the duty to make reasonable adjustments starting at **Issue 13**. This is said to be a complaint that Ms Stolarski, as the claimant’s line manager, failed in her duty to make reasonable adjustments.
77. **Issue 13.1** is about training, alleging it should have been given within one week of starting the job but was only given within a period of six to eight weeks. The claimant now says that this is about the time taken on retraining. It is still unclear to the tribunal how she says this would have worked and we really are unclear about how she says this is a reasonable adjustment. The claimant did not tell us anything about any disadvantage she suffered because of her dyslexia in connection with the training or re-training.
78. **Issue 13.2** is that the claimant should have had an additional person sitting next to her for support in addition to the trainer. The claimant has given no

evidence about how or when this should have been applied. We have no evidence about any disadvantage or how it might have been mitigated.

79. **Issue 13.3** is that questions to the claimant to test the quality of her work should have been done in private and not in front of colleagues and passengers. As indicated earlier, the tribunal has found no evidence of public conversations and indeed, we find that it would be highly unlikely that any security manager would have those kinds of conversations in front of the public in a sensitive area. The claimant has not made out the facts in relation to this allegation.
80. **Issue 13.4** is that the manager should have sat with the claimant to provide one-to-one support and guidance. Again, the claimant has given no evidence about this, how there was any disadvantage caused by her dyslexia or how such steps might have alleviated such disadvantage.
81. Lastly at **Issue 14**, this is failing to provide her with specialist or adapted equipment such as adapted keyboard, large print or braille materials or assisted listening devices. The tribunal has heard no evidence about this whatsoever. The claimant asked no questions about it and said nothing about it. We have no evidence on disadvantage or what might have alleviated any such disadvantage. No such request was ever made nor was the respondent aware of any such adjustments. That answers **issues 15,16 and 17**.
82. Although not strictly necessary because of our previous answers, we then consider the provision, criteria or practice (PCP) at **issue 18.1** The question is whether the respondent applied a provision, criterion or practice of requiring security officers to complete satisfactory complete training. That PCP was applied and is an entirely reasonable PCP.
83. The next question at **issue 18.2** is whether that PCP put the claimant at a substantial disadvantage in comparison with persons who are not disabled. The claimant had not been able to show such substantial disadvantage. She passed the training, in some cases, receiving good scores. For some months she appeared to function without any issues. There is no evidence of disadvantage whatsoever.
84. At **Issue 19** there is a question about whether the respondent had knowledge of disadvantage caused by the PCP and **issue 19.1** sets that out in more detail. The tribunal must find that the respondent cannot have been aware as the claimant has not been able to suggest any such disadvantage. Her case rather was that she was able to carry out the role and was unfairly picked on for restrictions.
85. The next question at **Issue 20** is whether the respondent took reasonable steps to avoid the disadvantage. Again, strictly speaking, we do not need to answer that because there is no such disadvantage so none were needed. We do want to record that there were two occasions where some adjustments were made; this is at page 147 which talked about rephrasing and we heard from Mr Chohan how he made some adjustments at the disciplinary hearing in terms of the time offered. The claimant has not managed to show any

disadvantage whatsoever with respect to auxiliary aids and there has been no evidence on that.

86. We therefore do not need to answer **Issues 21, 22 or 23**.
87. Turning then to victimisation, this is at **issues 24 and 24.1** which is the question about whether the respondent treated the claimant differently as a result of the grievances that she raised. The respondent did not treat the claimant differently because of the grievance she raised as we answer below.
88. **Issue 25.1** is the question of whether the claimant did such a protected act by raising a grievance. The tribunal accepts, as did the respondent, that the first part of the first grievance did raise a potential matter under the Equality Act. There is a direct reference to racism and to discrimination. That relates to 19 May 2018 incident complained about on 22 June. There was no reference to disability discrimination or the claimant's dyslexia.
89. However, her other grievances - the second part of that first grievance and the subsequent grievance do not amount to protected acts. There is no reference to the Equality Act, protected characteristics or anything which would suggest such matters giving the claimant concerns. This includes the one relied upon here at the tribunal for disability discrimination which was never mentioned.
90. The next question at **Issue 26.1** was whether the claimant was subjected to a detriment because of raising the grievance. This means we have to concentrate on the matter which was a protected act; that is the first part of the first grievance. The tribunal find that the respondent did not treat the claimant differently because of her having raised that grievance. She cannot show any difference in treatment. The grievances that were in time were investigated and decided in accordance with the respondent's process. The claimant simply cannot show a connection between any of the three alleged detriments and the fact that she had raised an issue about the trainers.
91. **Issue 26.2** asks whether the act complained of constitutes a detriment to the claimant? The tribunal accepts that dismissal is a detriment as is the decision not to investigate the first part of the first grievance. But the tribunal has found that Ms Kaur did not pressurise the claimant to drop grievances and, of course, made no error with respect to the 28-day time limit. The claimant simply cannot show any connection between the steps taken by the respondent and the protected act. There is no connection between the protected act and what happened to the claimant and that is the answer to **Issue 27.1**.
92. In summary, some of the claimant's claims are out of time. Some are in time. All her claims fail on the facts. The claimant has been unable to show the necessary link between her protected characteristic of disability because of dyslexia and what happened to her. There was no direct discrimination, no harassment, no failure to make reasonable adjustments and no victimisation.

Employment Judge Manley

Date: 23 May 2022

Sent to the parties on:

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For the Tribunal Office