EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Miss J Anderson	**v**	CAE Crewing Services Limited

Heard at: Reading **On:** 3-6 May 2022

Before: Employment Judge Anstis
Ms D Ballard
Mr J Appleton

Appearances:
For the Claimant: In person
For the Respondent: Miss H Platt (counsel)

REASONS

INTRODUCTION

1. These are the written reasons for the tribunal's judgment of 6 May 2022, which dismissed the claimant's claims. These reasons were requested by the claimant on 8 May 2022.

2. The claimant was employed by the respondent as a cabin crew member ("CCM"). She worked for the respondent as part of its contract to provide crew and pilots to Scandinavian Airlines, for flights operated from London Heathrow and Dublin airports.

3. The claimant started work for the respondent on 29 January 2018. She worked without difficulty through to the end of 2018, following which she (at least initially) was not certified as fit to fly following a medical. This resulted in a period of suspension from flying through to summer 2019.

4. We understand that matters relating to this period of suspension have been the subject of previous employment tribunal proceedings between the claimant and respondent, which are currently before the Employment Appeal Tribunal. We note the existence of this previous claim, but nothing in our decision depends on or relates to the outcome of the previous proceedings.

5. The claimant's claims are of (constructive) unfair dismissal and disability discrimination. The disability discrimination claims span a number of different aspects of disability discrimination. The issues for us to decide are set out on a list of issues prepared by the parties and attached as an appendix to these

reasons. The claimant has two disabilities, both of which are accepted by the respondent to have been disabilities at the relevant times for the purposes of her claimant's claim. They are (to use the claimant's terminology) bipolar and postural tachycardia syndrome ("PoTS").

THE LAW

Unfair dismissal

6. The claimant's claim of unfair dismissal is a claim of constructive unfair dismissal. In other words, the claimant says that she resigned in response to a repudiatory breach of contract by the respondent. The details of that alleged breach are set out in the list of issues, as is the respondent's counter-arguments on the question of any reason for the claimant's resignation and affirmation (or waiver) of any breach of contract.

7. All the statutory references that follow are to the Equality Act 2010.

Direct disability discrimination

8. Direct discrimination occurs where "*because of a protected characteristic, A treats B less favourably than A treats or would treat others*" (s13(1)).

Discrimination arising from a disability

9. Section 15(1):

"A person (A) discriminates against a disabled person (B) if:

(a) A treats B unfavourably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim."

Indirect disability discrimination

10. Section 19:

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

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

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

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

Harassment

11. Section 26(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."*

Victimisation

12. Section 27(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."*

Time limits in discrimination claims

13. Time limits are dealt with under section 123 of the Equality Act 2010 as follows:

"(1) [discrimination claims] *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 …*

(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.*

14. Those provisions on time are subject to the usual adjustments on account of early conciliation.

Causation in discrimination claims

15. We note from the respondent's reference to Greater Manchester Police v Bailey [2017] EWCA Civ 425 that where we are considering whether something occurred "because of" a relevant protected characteristic (or protected act), that requires us to look at the "reason why" something occurred, not simply whether the thing would have occurred "but for" the protected characteristic (or protected act).

The burden of proof in discrimination claims

16. Under section 136 of the Equality Act 2010:

> *"(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."*

17. We note from Hewage v Grampian Health Board [2012] UKSC 37 (para 32) that: "*it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.*"

PRELIMINARY ISSUE

18. A significant preliminary issue for us to address is the extent to which the claimant's disability discrimination claims are within our jurisdiction, given that they appear to have been brought outside the time limit for such claims. Many of her disability discrimination claims relate to the period from her return to work in 2019 through to the end of that year. She brought her claim in December 2020 so claims relating to events in 2019 are at least nine months outside the standard time limit for such claims to be brought.

19. It is common ground that the claimant is an experienced employment tribunal litigant, having bought two previous claims against different employers as well as her earlier claim against the respondent that we have referred to above. From what we heard, we understand each of those claims have had elements of disability discrimination to them. As regards the events that form the subject matter of this claim, the claimant had identified that the first matter she complains of – comments allegedly made during an interview for the post of senior cabin crew member – may have amounted to unlawful discrimination as early as August 2019 (see p357 of the tribunal bundle).

20. Despite the question of time limits having consistently been raised by the respondent, the claimant did not in her evidence give us any basis on which we

could find that it was just and equitable to extend time in respect of any complaint. We have been provided with no material as to why she did not bring her claims earlier, nor given any basis on which we could extend time.

21. The question of extension of time in this case is not simply a technical matter. In its evidence, the respondent described how a number of potential witnesses to these earlier events were no longer available to it. While we do not think this was necessarily fully described by the respondent, or provides a complete answer on that point, it is clear to us that the claimant's failure to bring these claims in time has caused prejudice to the respondent in being able to reply to them.

22. The claimant's arguments around time have been based on her allegations amounting to a "continuing act". This was fully expressed by her only in her closing submissions. She said the respondent's attitude toward her had changed on learning of her bipolar condition towards the end of 2018. She said this was the theme that linked what otherwise appeared to be different individual acts of alleged discrimination committed by different individuals within the respondent's workforce.

23. The claimant's allegations in respect of disability discrimination have a number of different aspects. They start with direct disability discrimination in respect of the comments allegedly made to the claimant by a manager during her interview for the position of senior cabin crew member in July or August 2019. That individual plays no further part in the claims the claimant brings. We were told, and accept, that they have since left the respondent's employment.

24. The next allegations relate to a clash with a colleague or colleagues during two flights in September and October 2019. The claimant makes allegations of disability-related harassment and discrimination arising from disability in respect of the actions of this colleague or colleagues and comments allegedly made by the colleague or colleagues during this flight. There is also a complaint in respect of "online abuse" relating to the period when the claimant was suspended from work, but no allegations are made against either colleague in respect of any actions occurring after October 2019. We were told, and accept, that the individual who the allegations are primarily made against did not return to work for the respondent following a second period of furlough in summer 2021.

25. The next allegation arises in respect of an invitation for volunteers to attend a Christmas concert. The invitation was sent on 20 November 2019. The individual who sent this invitation (and who appears to work for Scandinavian Airlines rather than the respondent) plays no part in any other matter that the claimant complains of.

26. There is then a further allegation of "online abuse" occurring on 10 December 2019, but again this concerns a different individual within the respondent's workforce.

27. The respondent makes wider points about time limits, saying that any incident prior to 17 September 2020 is out of time. We will discuss these wider points at the time we come to address the individual allegations, but so far as the allegations we have set out above are concerned, it seems to us that it is simply not arguable that they are continuing acts when taken together with anything occurring in 2020. The claimant has not established any link between these different allegations. Taking her claims at their highest, we do not consider we could properly find there to be any link. The claimant has not demonstrated any connection or link between these incidents, such as would enable us to find that they comprise continuing acts.

28. For this reason, the matters described at 3.1.1, 4.1 (which is the whole of the indirect discrimination claim), 5.1.1, 5.1.2, 6.1.1, 6.1.2, 6.1.3, 6.1.4 and 6.1.6 of the list of issues do not fall within the tribunal's jurisdiction even if they occurred in the way the claimant says they did. As such, it is not necessary or appropriate for us to make findings on the underlying merits of such claims, particularly in circumstances where the respondent has been restricted in its ability to call witnesses to reply to them.

THE ROSTER

29. The claimant objected to being rostered to work with the person she had been in dispute with. However, the respondent refused to separate them. As far as we can tell they were rostered to work together on a roughly monthly basis from November 2019 to February 2020. They worked together without incident for one flight in November 2019, but after that the claimant refused to work with her and she either arranged to swap shifts or (as we shall see) simply called in sick when rostered to work with this individual.

ABSENCES

30. A number of the claimant's remaining complaints relate to various absences from work. The absences that are in issue, and our findings on them, are as follows:

6 December 2019

31. On 6 December 2019 the claimant was called in at short notice to hospital for a preparatory appointment ahead of the fitting of a device that was required on account of her PoTS. She notified her managers only on the day of the appointment that she would not be able to attend work that day. This was clearly an absence that related to her disability. We were shown that this had originally been recorded as a sickness absence, with the relevant coding having been changed to "unauthorised absence" on 12 December 2019 and "not available" on 30 January 2020. We were not told how these various changes had come about. The respondent's position (which we do not understand be disputed) was that "not available" was not a coding that gave rise to any suggestion that the claimant had done wrong, and was not a coding that would have affected any eventual redundancy score in any way.

10 January 2020

32. The claimant was rostered to fly from Heathrow in the early hours of 10 January 2020. Prior to this she had been busy taking her mother to hospital, and had driven over 300 miles. On the morning she was due to work, she told the respondent that she was too fatigued to work. It is not in dispute that this notification was made later than the 180 minutes notice that the respondent required its employees to give. It also does not seem to be disputed that although the notification was late, it was given in sufficient time for the respondent to make alternative arrangements, and was in fact given before the earliest time that the respondent could call on standby crew to cover the claimant's work. It was thus at most a technical breach of procedure, which had no adverse consequences for the respondent. It was the claimant's case that her tiredness had been aggravated by her PoTS – although we accept the respondent's position that the first time she had said this was in her oral evidence at the tribunal hearing.

26 January 2020

33. The claimant had been rostered to work on 26 January 2020 with the individual who she had previously clashed with. During the course of her grievance appeal meeting on 21 January 2020 she had said to the appeal officer that "*I am not putting myself in situation where I am going to be discriminated against - I will give 180 mins notice if necessary - I can't do it and the company is aware*". She called in sick on 26 January 2020 and submitted a self-certification form for that day saying she was suffering from "work related stress".

6 March 2020

34. The claimant had been rostered to work on 6 March 2020. There are in the tribunal bundle a series of emails in which the claimant has attempted to swap shifts or persuade those managing the roster to remove her from work that day. She went so far as to indicate that the need for her to have this time off was so great that even if they could not provide cover for her work, she would not attend. The respondent says that there were crew shortages at that time, which was in the very early days of the Covid-19 pandemic. No cover could be found, and the claimant remained on the roster for that day. She called in sick for 6 March 2020, later providing a doctor's note certifying her as being unfit for work from 5-15 March 2020. There is no suggestion by her that this absence (or the reason for her originally wanting the time off) were anything to do with her disabilities.

THE CLAIMANT'S GRIEVANCE

35. The claimant complains that the respondent "*failed to adequately investigate* [her] *grievance*". This was agreed by her to encompass both 1.1.1 and 1.1.2 on the list of issues.

36. The claimant's grievance related to (amongst other things) comments that she said someone else had overheard a work colleague make about her. The claimant gave the detail of these overheard comments to the respondent. It is not disputed that she said that she would only give the name of the person who heard those comments if they were denied by the person who was alleged to have made them, and that if that person denied them then the grievance officer should get the name of the witness from the claimant.

37. The person alleged to have made them did deny them. However, it was only after she had sent the claimant a conclusion on the grievance that the grievance officer asked the claimant for the name of the witness.

38. The claimant appealed against the decision on the grievance. In determining the appeal, the appeal officer did speak briefly to this witness by telephone, though the claimant says that this did not amount to an adequate discussion with that witness.

39. The central points of the claimant's complaint about this are made out – at least so far as the initial grievance outcome is concerned. The grievance officer asked for the name of the witness later than she should have. The appeal officer did address the point, but did so only briefly. The extent to which this amounts to an "inadequate" investigation and the consequence of it being "inadequate" to any extent will be dealt with separately by us in considering the claimant's constructive dismissal claim.

DISCIPLINARY ISSUES

40. Further elements of the claimant's complaints relate to a disciplinary procedure that the respondent conducted in 2020.

41. During the course of an exchange on 10 January 2020 relating to the claimant's absence on that day, the claimant's manager told the claimant "*your general absence levels are above the expected standard of any employee and this … will be investigated. I am arranging for the meeting to happen as soon as practical*". This is the first suggestion that the claimant would be subject to any formal action, and we note that it arose long before there would have been any question of redundancies caused by the Covid-19 pandemic.

42. As we will come on to, the claimant refused to work with the colleague she had had the disputes with on the flights in September and October 2019. On 20 January 2020, having found she was rostered to work with that individual, she wrote in the roster "*I will not work with a vile bully*". She later accepted in her written submissions for the disciplinary hearing that this "*wasn't the best way to go about it*" and said "*I'm not suggesting that the note was the correct thing to do*".

43. On 7 February 2020 the claimant wrote to those responsible for the roster saying that she should not be rostered with this individual as "*there is an ongoing investigation about discriminatory comments that* [the individual] *had*

made about my disability, it is an ongoing matter that the company and HR are dealing with". This was not correct. By that point the grievance appeal had concluded and there were no ongoing investigations into the matter.

44. The claimant was off sick from 5 March 2020, and on 21 March 2020 the respondent suspended its operations in response to worldwide lockdowns and travel restrictions arising from the Covid-19 pandemic. By late summer 2020 it was looking to resume operations, albeit on a much reduced basis. Negotiations were ongoing with trade unions concerning a redundancy process, and while this was not yet finalised it appeared that an individual's disciplinary record and absences would play a significant part in selection for redundancy, subject to discounting any disability-related absences. The claimant's was one of a number of disciplinary processes that had been suspended when the respondent ceased operations, but on 17 August 2020 she was sent an invitation to an investigatory meeting to consider the following matters:

> *"- High levels of absence - As noted in roster*
>
> *- Premeditated absences - When it two occasions you have advised in advance that you will not attend your duties as roster for reasons other than medical and have been absent from work without approval. This refers to the absences on the 26th of January and 5th and 6th March.*
>
> *- Inappropriate annotations in roster - In regards of your absence on the 20th January.*
>
> *- Unprofessional email to Crew Control - Disclosing details of an ongoing HR investigation, sent on the 7th February."*

45. Following this, on 28 August 2020 the investigator wrote to the claimant to say:

> *"Given the intervening furlough period of recent months, the company considers that the best course of action regarding your attendance is to continue to informally review and monitor your attendance levels upon your return to work, with a view to supporting you in achieving the required attendance levels in the future. Your line manager will discuss this with you in more detail upon your return.*
>
> *Whilst we are hopeful that the required improvements can be made, you should be aware that if your attendance levels continue to be inadequate, then further formal action may be necessary.*
>
> *Three further allegations of misconduct were then discussed with you, namely:*
>
> *1. Two separate occasions of premeditated absences on 26th January 2020 and 5th/6th March 2020;*

> *2. The note you made on the roster on 20th January relating to a fellow member of staff; and*
>
> *3. The unprofessional email that you sent to crew control on 7 th February 2020.*
>
> *In relation to your responses regarding the above allegations, I do not accept that there was no wrongdoing on your behalf, and I consider that your actions on each of those occasions further consideration as an allegation of misconduct against you."*

46. The claimant was invited to a disciplinary meeting to take place in early September. This was postponed twice. The claimant submitted her resignation on 24 September 2020, shortly before the disciplinary hearing (25 September 2020), which then proceeded on the basis of written representations she had provided.

47. On 2 October 2020 the claimant was notified that the disciplinary hearing had decided to issue her with a final written warning. The disciplinary officer had accepted her explanation for her absence on 5 and 6 March 2020, so those absences no longer formed part of the allegations against her.

48. The claimant appealed against this decision. Her appeal was unsuccessful, but there is no issue in this case in relation to her appeal.

CONCLUSIONS

49. With those findings in mind, we will turn to address the remaining elements of the claimant's claim.

Dismissal

50. The first is constructive dismissal. It is said by the claimant that the respondent's inadequate investigation of her grievance, taken together with the issuing of her final written warning and the incorrect documentation of her Equality Act absences, amounted to a breach of the duty of trust and confidence, and prompted her resignation.

51. There are a number of problems with this.

52. First, it is not at all clear what the claimant knew of any of this at the time she resigned. She cannot have known of her final written warning, since that had not yet occurred. In her written submissions (written around the same time as her resignation letter) she seems to suggest that she expects to be dismissed. She did know that her colleague who heard the alleged comments had not been spoken to prior to the grievance officer's decision, but all that she knew about the appeal officer's decision was that he had spoken to the witness. She did not know of the quality of that discussion. For the absences, she knew that 6 December 2019 was coded as unauthorised and 10 January 2020 was coded as a "no show" but that was all.

53. Given that she cannot have known of the final written warning, what are we to make of the reference to this at 1.1.3 in the list of issues? The essence of the claimant's claim was that the disciplinary process was proceeding in bad faith, with a view to her then being made redundant via the impending redundancy selection process. We do not accept that, nor that any mis-recording of absences was directed at an attempt to make her redundant.

54. The first reason for this is that it is clear that disciplinary action was being contemplated in January, long before any question of redundancies arose.

55. The second reason is that it seems to us that the matters the claimant was subject to investigation for were valid and proper concerns that the respondent had. The claimant herself accepted that she ought not to have left the note on the roster.

56. The third reason is that the respondent appears to have been more than willing to properly drop charges against the claimant along the way. Issues in relation to absences generally were dropped following the investigation as was, later, any question in relation to the 6 March absence. The respondent does not appear to us to be eager to dismiss the claimant. We note also that if they had been, we would have expected them to take action against her based on the complaint made against her by the colleague with whom she had had the dispute. They did not do so.

57. Setting aside the final written warning, which as we have said cannot apply, the remaining elements of the alleged breach of the duty of trust and confidence were complete by 6 March 2020 at the latest, yet the claimant did not resign until September 2020. It seems to us this must be taken to be a waiver of any breach of contract by the claimant.

58. Finally, we conclude based on her own evidence that the claimant did not resign in response to any breach of contract. Instead she resigned because she considered that would be financially beneficial to her when compared with being dismissed or made redundant.

Direct disability discrimination

59. The claimant complains that the respondent failed to discount hospital appointments relating to her disability from the cumulative total of other sickness-related absence, or recorded it as unauthorised absence (issues 3.1.2 & 3.1.3).

60. The only date this can relate to is 6 December 2019 where, as we have found, the respondent did (eventually) code it in a way that caused the claimant no detriment. In any event, whether founded on the earlier or later code, this is out of time with no reason having been given for us to extend time. It is not within our jurisdiction.

Discrimination arising from a disability

61. We then have questions of discrimination arising from disability. Those that remain start at 5.1.3, which is being subject to disciplinary action for taking time off work for attending hospital appointments. We have very much the same problem here that we did when the point arose on a question of direct disability discrimination. This can only relate to 6 December 2019 hospital appointment and by the time of any disciplinary action being taken this was coded as being "NA", so there would be no criticism of the claimant for that absence. We don't see that the claimant has made out that complaint and in any event, it would seem to us to be one that was out of time and we would have no jurisdiction to consider it.

62. There are then the related points of issuing her with a final written warning for premeditated absences and conduct towards a colleague (5.1.4) and, as she puts it, forcing her to resign (5.1.5). We have addressed both of those during the course of our discussion on the claimant's constructive dismissal claim and we do not see her any incorrect actions there by the respondent. It doesn't seem to us that that is in any way discrimination arising from a disability.

Harassment

63. Moving to harassment, we have the question of the rostering arrangements. It is said that the respondent's actions in repeatedly rostering the claimant to work alongside a colleague that she considered to have humiliated her was an act of harassment (6.1.5).

64. As with quite a lot of the claim the claimant here seems to be adopting a "but for" approach to causation rather than the "reason why" approach that is the one that applies in discrimination claims. There is nothing to suggest that it was because of or related to the claimant's disability that the respondent rostered her in this way or that they would have treated anybody who did not have her disabilities in any different way. We do not see anything in the rostering arrangements that would amount to disability related harassment.

65. We also have the question of subjecting the claimant to disciplinary action for refusing to work with a colleague (6.1.7). The answer to that is the same. There is nothing in the evidence to suggest that the respondent did this to the claimant as unwanted conduct related to her disability. In any event, as the respondent points out in their closing submissions, the reasons for the disciplinary action were not (as such) the claimant's refusal to work with a colleague who she considered to be a bully.

Victimisation

66. There remain two points of victimisation (7.2.1 & 7.2.2). The respondent accepts that the claimant's tribunal claim of 20 June 2019 amounts to a protected act.

67. The claimant's victimisation claims are the deduction from salary for not attending work on 10 January and taking disproportionate disciplinary action.

We have already addressed these. We don't see anything suspicious or disproportionate in this and we see nothing to link it to the claimant’s earlier protected act or acts. We see nothing here that would suggest to us that any deduction from pay on 10 January (or any resulting coding of her absence) was related to the claimant’s earlier disability discrimination claims nor that the earlier tribunal claim(s) played any part in the decision to issue her with a final written warning.

Employment Judge Anstis
1 June 2022

Sent to the parties on:

16 June 2022

For the Tribunal Office

APPENDIX

LIST OF ISSUES

Constructive Unfair Dismissal

1.1 Did the Respondent breach the implied term of trust and confidence in the following ways:

1.1.1 Allowing a bullying and harassing environment to persist?

1.1.2 Failing to adequately investigate the Claimant's grievances?

1.1.3 Issuing a final written warning and incorrectly documenting the Claimant's Equality Act related absences, which the Claimant says would have inevitably resulted in her being made redundant if she had not resigned?

1.2 Did the Claimant resign in response to a repudiatory breach of contract by the Respondent?

1.3 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

1.4 If the claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract?

1.5 Was it a potentially fair reason?

1.6 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

Disability Discrimination

2.1 The Claimant is disabled pursuant to section 6 EqA by reason of her bipolar disorder and her postural orthostatic tachycardia syndrome (PoTS).

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

2.3 Did the Respondent have knowledge that the Claimant being overweight was a result of medication that she was taking for her disability?

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

Direct disability discrimination - section 13 EqA

3.1 Did the Respondent treat the Claimant less favourably than it treats or would treat others because of her disability in the following ways:

3.1.1 Questioning the Claimant's request for reasonable adjustments during an interview for promotion in July/August 2019?

3.1.2 Failing to discount hospital appointments related to the Claimant's disability from the cumulative total of other sickness-related absences?

3.1.3 Recording a hospital appointment for the fitting of a heart implant as an unauthorised absence?

3.2 The Claimant relies on a hypothetical comparator in respect of this claim and will rely on the treatment of herself before the respondent became aware of her disability.

Indirect disability discrimination — section 19 EqA

4.1 Did the Respondent apply a provision, criterion or practice ("PCP") to the Claimant and to others who do to not have the Claimant's disability? (The PCP relied upon by the Claimant is an internal email to staff on 20 November 2019 requesting that they wear uniform to a work-related event Uniform requirements include a requirement to wear high heels.).

4.2 If so, did the PCP put (or would it put) those with the Claimant's disability at a particular disadvantage when compared to others? The claimant says that people with hypermobility symptoms of PoTS are unable to wear high heels.

4.3 Did the PCP put the Claimant at that disadvantage? The claimant says she was unable to wear high heels because of PoTS.

4.4 If so, can the Respondent justify the PCP by showing it was a proportionate means of achieving a legitimate aim? The respondent relies on the need to have standard rules around uniform in a general email sent to all crew members but which could have been adjusted as necessary on a case by case basis.

Discrimination arising from a disability - section 15 EqA

5.1 Did the Respondent treat the Claimant unfavourably because of something arising in consequence of her disability by:

5.1.1. telling her that she was incapable of doing her job for not being able to wear high heeled shoes and a blazer in a hot working environment?

5.1.2 mocking and humiliating her for being overweight?

5.1.3 being subjected to disciplinary action for taking time off work for attending hospital appointments?

5.1.4 issuing the claimant with a final written warning for premeditated absences and conduct towards a colleague?

5.1.5 forcing her to resign, which she says would otherwise have been compulsory dismissal by means of high points on the redundancy matrix, as a result of the final written warning and absences being recorded as unauthorised or no-shows?

5.2 Did the following things arise in consequence of the claimant's disability?

5.2.1 not being able to wear high heeled shoes and a blazer in a hot working environment

5.2.2. being overweight

5.2.3 having to take time off work to attend hospital appointments

5.2.4 premeditated/unauthorised absences

5.2.5 the claimant's conduct towards a colleague for which she received a final written warning

5.2.6 the final written warning.

5.3 If the Respondent is found to have treated the Claimant unfavourably, can it show that such treatment was a proportionate means of achieving a legitimate aim? The respondent says (in relation to 5.1.3, 5.1.4 and 5.1.5) that the requirement to comply with absence procedures is to ensure the health and safety of passengers by having sufficient numbers of crew members on each flight and having sufficient notice of any absences to enable cover to be arranged and to protect the health and safety of its employees and fostering a workplace culture of respect and dignity.

Harassment - section 26 EqA

6.1 Did the Respondent engage in unwanted conduct in the following ways:

6.1.1 repeatedly shouting at the Claimant for not wearing uniform-standard shoes?

6.1.2 telling the Claimant that her inability to wear high heels made her incapable of doing her job?

6.1.3 humiliating her in front of colleagues and passengers for not wearing high heels and removing her blazer when she over-heated?

6.1.4 mocking and humiliating the Claimant for her weight?

6.1.5 repeatedly rostering the Claimant to work alongside a colleague whom the Claimant considered to have humiliated her and upset her whilst on duty?

6.1.6 being subjected to online abuse by colleagues?

6.1.7 subjecting the Claimant to disciplinary action for refusing to work with a colleague whom the Claimant considered to be a bully?

6.2 If so, was it related to the Claimant's disability?

6.3 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

6.4 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Victimisation - section 27 EqA

7.1 Did the Claimant do a protected act within the meaning of section 27(2) EqA? The protected acts relied upon by the Claimant are the claimant's previous employment tribunal claims, claim numbers 2302155/19, 2303198/19 and 3319529/19.

7.2 Did the Respondent subject the Claimant to a detriment because the Claimant had done one or more protected act, in the following ways:

7.2.1 Making a deduction from the Claimant's salary for not attending work on 10 January 2020 and issuing the Claimant with a "no-show" for this absence?

7.2.2 Taking allegedly disproportionate disciplinary action against the Claimant and issuing her with a final written warning?

Jurisdiction

8.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

8.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

8.1.2 If not, was there conduct extending over a period?

8.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

8.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

8.1.5 Why were the complaints not made to the Tribunal in time?

8.1.6 In any event, is it just and equitable in all the circumstances to extend time?