EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondents**
Mr F Ahmed		Ward Security Limited

Heard at: London Central Employment Tribunal

On: 15, 16, 17, 18 November 2022

Before: Employment Judge Adkin
Ms N. Sandler
Mr P de Chamont-Rambert

Representations

For the Claimant: in person
For the Respondent: Ms L Suding, Counsel

JUDGMENT

The following claims are out of time, the Tribunal did not extend time and are dismissed:

(1) Claim of unfavourable treatment because of something arising from disability brought under section 15 of the Equality Act 2010 (allegations in April and June 2021).

The following claims are not well founded and are dismissed:

(2) Claim of unfavourable treatment because of something arising from disability brought under section 15 of the Equality Act 2010 (remaining allegation October 2021).

(3) Claim of failure to provide rest breaks brought pursuant to regulations 12 & 30 of the Working Time Regulations 1998.

REASONS

Procedure

1. This hearing took place by video (CVP). On the first morning of the hearing the Claimant joined from home with two iPhones. He was using one as a video camera and the other to try to access documents such as the 450 page bundle and witness statements. This was not satisfactory and risked prejudicing his ability to follow the hearing. Accordingly and by agreement the Claimant came in to the Tribunal on the afternoon of the first day. The Respondent made available hardcopies of the bundle and witness statement and the Claimant gave evidence from a Tribunal room. On subsequent days in the hearing the Claimant attended from home; once he had the printed materials he was able to join satisfactorily and the CVP system performed well.

2. On the second day of the hearing the Claimant applied to rely on new documents, which were mostly images of his shift rota in 2020. We allowed him to introduce this evidence, although ultimately it did not prove to be relevant to our determination. At that time it was clarified with the Claimant that there were no further documents upon which he sought to rely.

3. At the conclusion of the case, after the Respondent had finished making submissions and during the Claimant's submissions he sought to rely on some messages on his phone. We ruled it was too late for him to introduce new evidence which might have required recalling of a witness for the Respondent (now the next employee), recalling the Claimant himself to give further evidence and further rounds of submissions, which might well have jeopardised the ability to complete this hearing within the four day time estimate.

4. Our judgment and reasons were given orally at the hearing. The Claimant requested written reasons at the conclusion of the hearing.

Evidence

5. There was an agreed bundle of 450 documents and witness statements from the Claimant and one page "to whom it may concern" message from Sid Armitt, not a formal witness statement, nor was it signed. Mr Armitt did not give oral evidence.

6. From the Respondent we received witness statements and heard live evidence from David Grant, Anthony Burns and Stephanie Huxtable.

Findings of Fact

Overview

7. The Claimant was employed by the Respondent, a security company, as a security officer, from 30 January 2018. He is still employed by them.

8. Early conciliation started on 12 November 2021 and ended on 24 November 2021. The claim form was presented on 24 November 2021.

9. The Claimant is a field-based security officer who, on a daily basis, covers the lunchtime breaks of fellow security officers who are based in various locations in central London. He covers a lunchtime break and then travels (and is paid to do so) to the next location to cover another lunchtime break and so on.

10. On 30 January 2018 the Claimant started employment with the Respondent.

Gout onset

11. In approximately January 2021 the Claimant says that symptoms of gout began, although he received no diagnosis at that time.

Working hours

12. By a letter dated 26 February 2021 the Respondent confirmed that from 1 January 2021 the Claimant was working 6 hours per day, plus 2 hours travel per day.

21 April 2021 – fire alarm incident

13. On 21 April 2021 David Grant at the Respondent received a complaint from the client regarding the Claimant, that during a firm alarm the Claimant simply ignored the alarm and sat with his earpods (headphones) in on a sofa. The Claimant disputes what interpretation is to be placed on this and says that the Respondent initially misunderstood what had occurred.

28 April 2021

14. There was a verbal exchange at Cable House between Claimant and David Grant regarding uniform on 28 April. The Claimant says this was witnessed by Sid Armitt.

15. Mr Armitt did not attend the Tribunal to give evidence and his note was not signed as a witness statement. It was addressed "to whom it may concern" and referred to Mr Grant "shouting" and described his “very abrupt body language". Mr Armitt states that Mr Grant "stormed out" which he thought was "not right". Mr Armitt did not attend to give evidence. Accordingly there is only limited weight that we can place on his statement since he has not been cross-examined, although it is not been suggested to us by the Respondent that there was a particular reason why Mr Armitt would misrepresent what he had seen at the time.

16. The Claimant's evidence both in his written statement (paragraph 9) and in his oral evidence is that David Grant was angry with on this occasion because of not being on site whilst a fire alarm was sounding relating to the previous week. That the fire alarm was the particular cause of Mr Grant's annoyance is confirmed in the grievance submitted by the Claimant in an email dated 18 October 2021.

17. David Grant's evidence is that the Claimant told him on 28 April that he had gout and was wearing trainers to manage this condition. Mr Grant says that this was new information to him and that he told the Claimant he would need to get a doctor's note.

18. The Claimant's oral evidence in the Tribunal hearing was that Mr Grant was shouting and not able to understand what the Claimant was getting across to him. Later in the hearing the Claimant said that he accepted that Mr Grant must have understood this the reference to gout.

19. We have considered the fact that the Claimant only received a formal diagnosis of gout on 14 May 2021. The Claimant did however explain to us that prior to this he already suspected that he had gout or perhaps a nerve problem in his foot.

Uniform failure complaint, 28 April 2021

20. On 28 April 2021 David Grant informed HR of the Claimant's uniform failures in the following terms:

> "Natalie
>
> Can you get someone to carry out investigation meeting for the above I have attended cable house he is in trainers black trouser a T-shirt and ward fleece ,
>
> He also has ear pods in both ears while at reception
>
> This is not acceptable"

21. The Tribunal queried with Mr Grant why this email does not mention what the Respondent now says which is that there had been something of a history in relation to the Claimant's uniform. Mr Grant told us, and we accept, that he was in a rush and tended to write short messages on his phone as he was travelling to the next site. We accept that is what happened and it is consistent with other short messages sent by him.

Investigation meeting

22. On 5 May 2021 the Claimant was invited to an investigation meeting (rearranged) to discuss the following allegations:

    22.1. Failure to comply with wearing correct uniform whilst on duty

22.2. Wearing EarPods whilst on duty - 21st April 2021

22.3. Sitting on sofa while fire alarm is going off - 21st April 2021

Diagnosis of Gout

23. On 14 May 2021 the Claimant received a formal diagnosis of gout. The Newham University Hospital Emergency Department carried out an x-ray of the Claimant's right foot. A note from the hospital contains the following:

> "Pain in toe - 1st MTPJ pain & swelling
>
> Noted that the Claimant had an injury in the past -
>
> Diagnosis clinically early-onset of gout
>
> Prescribed naproxen 250mg (painkiller), wedge shoe and a pair of crutches
>
> GP to review for further management *[142]*

Disability Impact Statement

24. The Claimant confirmed in his disability impact statement sent by email dated 24 March 2022 that he was provided with “splint boots”, crutches and a stick. He says:

> “The effects of my disability come in various forms, please see below:
>
> walking, getting out of bed, going to bathroom, standing, climbing stairs, driving, gardening, the ability to take care of family, and social activities such as going to the mosque, traveling, going out of town.
>
> I would also like to add that the impairment did affect me not only in a physical way but mentally too, resulting in making it difficult to interact with colleagues, following instructions and carrying out any work-related activities as the pain of the flare was severe. Please see below of a study which was done on patients with gout.
>
> Without the treatment of splint boots, crutches, and a stick it would’ve have made it more difficult than it already was to carry out any of the activities I stated in 10.2. the treatment was an assist to ease the severe pain I was facing. walking, getting out of bed, going to bathroom, standing, climbing stairs, driving, gardening, the ability to take care of family, and social activities such as going to the mosque, traveling, going out of town.”

Walking times between jobs

25. In his claim form, which the Tribunal allowed the Claimant to adopt as part of his written evidence, the Claimant said that it took him 35 minutes to walk from Cable House to Capco, two of the sites where he worked providing cover. In his oral evidence he described this as being 45 minutes, although when challenged said "don't quote me" and then suggested that it varied from day-to-day and might be 37 minutes on one day and 42 minutes another day and on other days as long as an hour. He said that he gave reason to Respondent's control when he arrived late. He said that he was sometimes on crutches and that it also had conversations with Stephanie Huxtable. It is not possible to be precise about when that conversation took place.

Disputed meeting notes

26. There are a series of notes in the bundle taken at disciplinary investigations, disciplinary meetings and investigation of the Claimant's grievance which the Claimant contends in the Tribunal hearing are inaccurate. He suggested that they were up to 90% wrong, which we can only imagine is not meant literally but something of an exaggeration to make a point. In any event he says that the notes have been modified to incriminate him.

27. The Tribunal has considered these notes carefully. There are a couple of points which have led us to query the accuracy of the notes. For example there is the dispute about final written warning or first written warning (see below). Another example is that the disciplinary outcome letter on 7 June 2021 puts particular emphasis on wearing of trainers, although it notes that the Claimant says that he has gout which is a mitigating circumstance. We found it somewhat surprising that such emphasis was put on the trainers, since the notes of the previous meetings refer to the absence of a shirt, which would be a clear breach of uniform policy and there was no mitigating explanation for it.

28. In short there are a couple of features of the notes which have lead the Tribunal to scrutinise them with some care. We have noted however that there is more than one notetaker and in effect the Claimant is suggesting that there is something close to a conspiracy to deliberately inaccurately record notes.

29. We would need cogent evidence to suggest that this is the case. Ultimately these minutes are the best evidence that we have as to what was said at this meeting. The Claimant has not produced his own notes and did not during the internal process produce his own notes or any corrections to the Respondent's notes. He has not done so at this hearing.

30. Both Mr Grant and Ms Huxtable confirmed that the standard process was to provide the Claimant with notes so that he could check them. The Claimant did not dispute this.

31. On the balance of probabilities we find that the notes recorded reflect an honest attempt to record what was said at the meeting. They were not necessarily verbatim, and may not be perfect but they are the best evidence we have of what

was said. We do not find that there was a systematic attempt to misrepresent what the Claimant or others said in these meetings

Investigation meeting 17.5.21

32. At the investigation meeting on 17 May 2021 attended by Stephanie Huxtable and Claimant, Mr Ahmed said:

> Yes, put my hand up. David is right I was wearing trainers, I know it isn't acceptable but pain I was in sometimes wear trainers, I know I have been told by you and David many times that I need to be in full uniform. I was wearing trousers, t shirt and ward soft shell jacket - missing was shirt, tie and shoes. Hands up to that one I know it isn't acceptable.
>
> Due to my recent trip to hospital been diagnosed with Gout, due to this I have been given special shoes by the hospital to help.
>
> SH Are there occasions when you have been wearing headphones whilst on duty?
>
> FA Hands up yes, on this date yes, when fire alarm went off though I was not listening to music on the phone etc. I have headphones in so much as I am booking on and off with control all day. So yes, they did see me with headphones in but not active. Not using them.

33. The Claimant denied that he just ignored the fire alarm.

34. The Claimant agreed that from the following day onward he would work for uniform, apart from shoes. He mentioned that he needed a new tie.

35. The Claimant also said

> "David [Grant] came on site and was angry and said the fire alarm went off and I wasn't there".

Investigation report

36. On 20 May 2021 an Investigation Report was submitted by Stephanie Huxtable. The recommendation of that report was that the fire alarm incident not carried through to a disciplinary matter; but non-compliance with uniform and wearing of ear pods did warrant a disciplinary process.

Disciplinary hearing

37. On 1 June 2021 a Disciplinary Hearing took place. David Grant and Claimant attended and the notes were taken by Georgina Ward. In that meeting the following exchange is recorded:

> "FA Yes. I was expecting this. You have told me several times before regarding the uniform.
>
> You have been fair."
>
> DG Yes I recall telling you about wearing the correct uniform many times. I see that at the investigation meeting you admitted to the allegations.
>
> FA Yes I did.
>
> FA Obviously with the shirt, I didn't wear it. I know it was completely wrong. Yes I was wearing trainers but the reason I was wearing trainers was because of my gout issue, it's really painful. I know that Stephanie said I should have reported this medical issue to Ward.
>
> DG Yes, in relation to the gout issue, you need to obtain a doctor's note. Once we have that I will allow you to wear trainers or the proper shoes, but they must be smart plain black trainers.
>
> FA Yes, the note is ready for me to collect at the doctors. I must go get it.
>
> DG Ok, please send this to Georgina in HR as soon as possible. You have done yourself a favour by putting your hands up and admitting to these issues.

38. On the second page of the note is recorded that Mr Grant issued the Claimant with a first written warning. The Claimant strongly disputes that this was said and says that in the meeting he was issued with a final written warning, although that is not what the subsequent follow-up letter stated.

Further client complaint

39. On 2 June 2021 there was a complaint from a client about Claimant using personal phone shouting and using foul language whilst on duty. Ms Huxtable investigated this matter leading to the Claimant apologising to the client.

40. Although this is not relevant to matters that we have had to determine, the Tribunal makes the observation that this was a comparatively lenient outcome given what the Claimant had been apparently been shouting.

Sick absence

41. On 4 June 2021 the Claimant was signed off sick until 18 June 2021.

42. On 7 June 2021 Ms Ward in HR sent David Grant a proposed outcome letter from the disciplinary that had taken place:

> Hi David,

> If you have a moment this afternoon could you review the attached outcome letter. Upon reflection and in anticipation of a further investigation starting shortly regarding his conduct on duty I would recommend providing a first written warning and not a final written warning.
>
> Happy to chat about it.
>
> Kind Regards
>
> Georgina Ward
>
> Regional HR Manager for London

43. There is a dispute between the parties about whether the Claimant was originally told in the disciplinary meeting that he was going to get a final written warning. That is what the Claimant says. Mr Grant denies it and the note of the meeting says that was going to be a "first written warning". It is clear that Georgina Ward of HR on 7 June 2021 did provide guidance and her opinion which is that there should be a first written warning not a final written warning. Within a couple of minutes Mr Grant accepted that suggestion by his reply email.

44. Ultimately it is not essential for our decision-making to resolve the dispute about whether the words “first written warning” or “final written warning” were said in the meeting on 1 June, although we have noted the dispute.

45. A first written warning is the sanction that was applied.

Disciplinary outcome

46. On 7 June 2021 there was an outcome to the disciplinary process. The Claimant was issued with a first written warning. The letter contained the following:

> "The hearing was held following allegation of:
>
> o Failure to comply with wearing correct uniform whilst on duty.
>
> o Wearing EarPods whilst on duty - 21st April 2021.
>
> During the hearing you stated that:
>
> o You admit to no wearing the correct uniform whilst on duty, specifically that you were wearing trainers. In mitigation of this you stated that you were wearing trainers because you suffer from gout which is painful.
>
> o You admitted to wearing EarPods whilst on duty on 21st April 2021 which were not on at the time.
>
> Taking the above into consideration it has been decided that you will be issued with a First Written Warning which will remain on your file

> for a period of 12 months, if any further recurrence of a similar nature or continuing misconduct may result in dismissal.
>
> It was recommended to you to obtain a doctor's certificate confirming your medical condition and requesting that you be allowed to wear smart black trainers as part of your uniform to assist the company in making the necessary adjustments for you.

Sick absence in August 2021

47. The Claimant was absent on paid sick leave on 23, 24, 25, 30 August 2021.

Working pattern from 25 August 2021

48. In the amended grounds of response the Respondent sets out the working pattern that the claimant had from 25 August 2022 until 18 October 2022 as follows:

> 33.1. 1 hour shift: 12:00-13:00 at 78 Cornhill;
>
> 33.2. 15-minute window incorporating travel time: 13:00-13.15 - (the distance between 78 Cornhill and Cable House is approximately 0.4 miles)
>
> 33.3. 1 hour shift: 13:15-14.15 at Cable House;
>
> 33.4. 45 minute break incorporating travel time: 14:15-15:00 (The distance from Cable House to CAPCO is approximately 0.8 miles); and
>
> 33.5. 5-hour shift: 15:00-20:00 at CAPCO.

49. The Tribunal notes that this describes an eight hour shift, with one hour break. It follows that the Claimant was working 7 hours per day. The Claimant was paid an hour on top of that.

50. The Claimant told us in his oral evidence that the client at Capco – Mr Junior Ramsey, Head of Security, was aware of the difficulty he was experiencing and would allow him to eat his lunch in the eating area on site in an area where members of staff ate.

51. In the last week of Sept 2021 Claimant mentioned to Stephanie Huxtable that he was having difficulty with rest breaks because of travel between sites. She said in her witness statement:

> 34. A few days [after 22 September] , I had a conversation with the Claimant about his lunch breaks when I saw him on site. He raised a concern that he had insufficient time to take his breaks when he

> was travelling between sites. I verbally explained to him that he should have had sufficient time as the travel distances and travel time were gathered via google maps between sites and these were factored in to ensure it was possible for adequate breaks to be taken by security staff.

52. This evidence was not challenged by the Claimant during Ms Huxtable's evidence. The Tribunal accepts Ms Huxtable's unchallenged evidence that there was a conversation about the Claimant having insufficient rest breaks because of the impact of gout on travel time at the end of September 2021 (there is a reference in the witness statement to 2022 which we assume is typographic error).

October 2021 incident

53. On 8 October 2021 the Claimant was working at Capco and Mr Grant took a photograph because he perceived that the Claimant was not wearing specifically wearing ear pods and using a personal phone. The Claimant was concerned that he had not consented to this.

54. Although in the Claimant's oral evidence to the Tribunal he linked this incident to him wearing trainers, in fact looking at his claim form, and his witness statement for this hearing and also the discussion that he had with Ms Huxtable on 18 October 2021, trainers do not feature in any of those documents at all.

55. Mr Grant in an email on 18 October 2021 (176) wrote an email to Ms Huxtable referring to a client complaint he said that

> "At 1608 I attended site and saw fahim Ahmed At reception wearing his coat."

56. There is no mention in this correspondence about the Claimant wearing trainers.

Grievance

57. On 11 October 2021 the Claimant submitted a grievance about Mr Grant by email. The Claimant wrote:

> "I wanted to reach out to you as I feel like I have been specifically targeted and it is having a toll on my mental health. I have had ongoing issues with an employee called David Grant. He has previously tried to give me a final warning only for HR to amend his decision to first written warning as I have had no prior issues whilst working for the company. That issue was around wearing black trainers whilst I was suffering from a serious condition called Gout. I have now stumbled across another issue for wearing a coat whilst returning from collecting my food to eat for lunch. I work 8 hours a day and do not get a lunch break so I have to fit in eating lunch around working hours. As I returned with my food, David Grant

> appears and takes a photo of me on what looks like to be a personal phone. I do not appreciate staff members taking photos of me without my consent and at the time David Grant threatened me to take this further to accomplish his aim of getting me sacked. I have been feeling targeted bullied by David Grant. The way I have been treated compared to others is a big difference. I get called into an investigation meeting for wearing a coat but others do not which is direct discrimination.
>
> I would like to request your help in fixing this issue as I am in a position of no power to argue my stance with David Grant as I believe he abuses the power of his position. I am legally entitled to 30 minutes break for every 4 hours I work but since being employed, I have been able to manage however, since David Grant had become head of operations over a year after I had been employed, I have been struggling to eat lunch without the fear of being bullied by him. I would appreciate if you could help or point me in the correct direction of whom I need to raise this issue with.

58. The reference to legal entitlement is obviously a reference to the Working Time Regulations 1998. The Claimant has referred to the provision for young workers - i.e. workers under the age of 18. In fact as an adult he would only entitled to 20 minutes in every 6 hours.

59. We note that there is no reference to trainers in this complaint.

60. The Claimant sent a further email supporting the basis of his grievance against Mr Grant on 18 October 2021. That suggested that he felt he was being bullied and he referred to various rumours about Mr Grant which are not relevant for present purposes.

Payment for extra hour

61. On 15 October 2021 Ms Huxtable wrote to the Claimant as follows

> "Although you are working 4 hours you'll get paid 5, the 5th hour will be paid as a "premium" which means Elaine will add the hour to your wages but it won't be rostered."

62. This change took effect from 18 October 2021 and the effect on the claimant's hours is set out below.

Investigation report

63. On 18 October 2021 Ms Huxtable produced a investigation report recommending formal action to be taken on the following basis:

> Failure to wear full and correct uniform whilst on duty at Capco on 8th October 2021. Wearing EarPods and using a personal phone whilst on duty on 8th October 2021.

64. As part of this investigation report Ms Huxtable noted that the Claimant was having to eat his lunch at client site. She recorded as follows:

> "Also discussed breaks on site - to be taken prior to work starting as only on site from 4 to 8pm now and has time for lunch break between - works only 6 hours so entitled to only 20 mins break.
>
> Client does not mind him having some food but it is a paid break and so he must respond to queries as needed and it must be at the tables at the end of the reception desk so not sitting eating at reception." -

Investigation hearing 18 October 2021

65. In the investigation hearing on 18 October 2021, Ms Huxtable said to the Claimant:

> You have had uniform ordered for you so you've no excuse, although you haven't picked it up despite being chased to collect the uniform several times.

66. Later on that day, the Respondent's Servicetrac system contains this entry 11:39

> "not wearing uniform on site and breaks from front desk"

67. Ms Huxtable says that it was likely to have been her who made that note on the system.

Change of working hours

68. On 18 October 2021 the Claimant's hours changed to the following pattern:

> 1 hour shift: 12:00-13:00 at 78 Cornhill;
>
> 15-minute break incorporating travel time: 13:00-13.15 (the distance between 78 Cornhill and Cable House is approximately 0.4 miles)
>
> 1 hour shift: 13:15 to 14:15 at Cable House;
>
> 1 hour and 45 minute break incorporating travel time: 14:15 to 16:00 (the distance between Cable House and CAPCO is approximately 0.8 miles); and
>
> 4-hour shift: 16:00 to 20:00 at CAPCO.

69. As a result of this change the Claimant worked one hour less at the CAPCO client site. His pay did not change however.

Investigation of the grievance

70. On 26 and 28 October 2021 Mr Anthony Burns, Associated Director for the South Region, who had been appointed to hear the grievance, interviewed the Claimant regarding his grievance against David Grant by Microsoft Teams. Notes were taken by Debbie Aitken

71. During the course of these interviews the Claimant confirmed that the incident about which he complained in October 2021 did not relate to his shoes, which further undermines the contention in relation to his trainers has made front of this Tribunal.

72. As part of the investigation, on 5 November 2021 Mr Burns interviewed David Grant. Notes of that meeting were taken by Debbie Aitken.

73. Mr Grant explained in that investigation meeting that the Claimant

> "was given a warning for not wearing correct uniform and having earphones in, I was the one that told him as he was wearing black Nike Air Max to get some plain black trainers, I told him they had big white ticks on them to get plain black ones"

74. We note that there was no express reference to white ticks in the original disciplinary process but it is clear that Mr Grant gave the Claimant guidance about wearing plain black trainers.

Grievance outcome

75. On 12 November 2021 Mr Burns delivered an outcome to the grievance via letter. He dealt with the Claimant's allegations point by point.

76. In the main Mr Burns did not uphold the grievance, however did acknowledge that the photograph had been taken without the Claimant's consent. He confirmed that photographs of the Claimant had been deleted from mobile phones and a communication sent to management reminding them that they were not permitted to take photographs without first gaining consent.

77. On 15 November 2021 the Claimant appealed the grievance outcome via email.

ACAS

78. On 12 November 2021 the ACAS conciliation period commenced. The certificate was issued 24 November 2021.

Second grievance

79. On 16 November 2021 Claimant raised a second grievance in relation to the outcome of the disciplinary.

80. An outcome to that grievance was provided by Chris Glen, Account Manager on 22 December 2021. He did not uphold the grievance.

81. Mr Glenn had conducted a number of interviews and summarised the Claimant's working hours which had varied year by year. He recorded that the Claimant admitted that he had a paid lunch break. He explained that the Claimant was afforded paid travel time in between sites and up to one hour 45 minutes between two specific sites (Cable House and Capco).

Claim

82. The Claimant presented a claim to the Employment Tribunal on 24 November 2021.

GP record

83. A GP note dated 4 March 2022 contains the following:

> "This patient has clinically got gout in right foot, 3 acute attacks. Last episode was 3 months ago. He is requesting at work to be allowed to wear trainers."

Disability disputed

84. As to disability, on 6 April 2022 the Respondent confirmed that disability was in dispute, writing that it "does not accept that, at the relevant date, for the purposes of the Equality Act 2010, the Claimant's gout had a substantial effect on the Claimant's ability to carry out normal day-to-day activities, that the effect on him was substantial or that the effect was long term"

LAW

Equality act

85. Section 15 of the Equality Act 2010 provides as follows:

> 15 Discrimination arising from disability
>
> (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.

> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Justification - proportionate means

86. The case law on justification suggests that proportionate means must be "appropriate" and "necessary". In this context, following the guidance of the Supreme Court in *Chief Constable of West Yorkshire Police v Homer* 2012 ICR 704, SC and *Hardy and Hansons plc v Lax* 2005 ICR 1565, CA "necessary" is to be read as "reasonably necessary".

Working Time Regulations/rest breaks

87. The Working Time Regulations 1998 contain the following provisions:

> Rest breaks
>
> 12.—(1) Where an adult worker's daily working time is more than six hours, he is entitled to a rest break.
>
> (2) The details of the rest break to which an adult worker is entitled under paragraph (1), including its duration and the terms on which it is granted, shall be in accordance with any provisions for the purposes of this regulation which are contained in a collective agreement or a workforce agreement.
>
> (3) Subject to the provisions of any applicable collective agreement or workforce agreement, the rest break provided for in paragraph (1) is an uninterrupted period of not less than 20 minutes, and the worker is entitled to spend it away from his workstation if he has one.
>
> Other special cases
>
> 21.
>
> Subject to regulation 24, regulations 6(1), (2) and (7), 10(1), 11(1) and (2) and 12(1) do not apply in relation to a worker–
>
> (a) where the worker's activities are such that his place of work and place of residence are distant from one another, including cases where the worker is employed in offshore work, or his different places of work are distant from one another;
>
> (b) where the worker is engaged in **security and surveillance activities** requiring a permanent presence in order to protect property and persons, as may be the case for security guards and caretakers or security firms; [emphasis added]

Compensatory rest

24. Where the application of any provision of these Regulations is excluded by regulation 21 or 22, or is modified or excluded by means of a collective agreement or a workforce agreement under regulation 23(a), and a worker is accordingly required by his employer to work during a period which would otherwise be a rest period or rest break—

> (a) his employer shall wherever possible allow him to take an equivalent period of compensatory rest, and
>
> (b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, his employer shall afford him such protection as may be appropriate in order to safeguard the worker's health and safety.

Remedies

30.—(1) A worker may present a complaint to an employment tribunal that his employer—

(a) has refused to permit him to exercise any right he has under—

> (i) regulation 10(1) or (2), 11(1), (2) or (3), **12(1)** or (4), 13 or 13A;
>
> (ii) regulation 24, in so far as it applies where regulation 10(1), 11(1) or (2) or 12(1) is modified or excluded;

(2) … an employment tribunal shall not consider a complaint under this regulation unless it is presented—

> (a) before the end of the period of three months …. beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;
>
> (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three … months.

Time limits

88. In **Scottish Ambulance Service v Truslove** EATS 0028/11 (unreported, 12 January 2012), Lady Smith held that time started running on each occasion that the Claimants did not receive the daily rest or compensatory rest to which they were entitled. Lady Smith wrote as follows at paragraph 31 of her judgment:

> "Mr Edwards [for the Claimants] did not suggest that workers in the position of the Claimants had perpetual rights to claim because they had continuing rights to rest. His position was that each time a worker did not actually receive the rest to which he was entitled under WTR (a right which was not dependent on having specifically asked for it), a fresh time bar period started to run. He fully accepted that they could not extend their claims back further than three months (save for where the statutory grievance procedures had the effect of extending that period to six months). I agree that that approach is in accordance with the provisions of Regulation 30(2)."

Whether express request by worker necessary

89. There have been conflicting authorities on whether a refusal to permit rest breaks can arise in the absence of an express request by the worker. It seems the most recent position is that it can be.

90. In ***Grange v Abellio London Ltd*** 2017 ICR 287, EAT the Appeal Tribunal held that an employer's failure to make provision for rest breaks can amount to a 'refusal' to permit them, *even in the absence of an express request by the worker*. In the EAT's view, it was clear from the ECJ's decision in *Commission of the European Communities v United Kingdom* that the entitlement to rest breaks under the Working Time Directive was intended to be actively respected by employers for the protection of workers' health and safety. In **Grange** the bus company simply eliminated a half-hour break, giving the employee no break at all. It follows that employers cannot ignore the requirement for rest break and wait to see if employees mention it. There is a positive duty to afford the entitlement to take a rest break. The entitlement is refused if the working arrangements fail to allow that.

Compensatory rest break (reg 24(a))

91. What is a compensatory rest break within the meaning of regulation 24(a) WTR 1998? The Court of Appeal provided the following guidance in the case of **Hughes v Corps of Commissionaires Management Ltd (No. 2)** [2011] IRLR 915, CA, (para. 54, per Elias LJ):

> "it must have the characteristics of a rest in the sense of a break from work. Furthermore, it must so far as possible ensure that the

period which is free from work is at least 20 minutes. If the break does not display those characteristics then we do not think it would meet the criteria of equivalence and compensation".

CONCLUSIONS

DISABILITY DISCRIMINATION CLAIM UNDER THE EQUALITY ACT

Time Limits

92. The Claimant presented his claim on 24 November 2021, having gone through the ACAS conciliation process between 12-24 November. It follows that events in April and June, are out of time in the absence of a continuing act. It was by contrast, in time to complain of events in October 2021.

93. We have not found that there was a continuing act or discriminatory state of affairs, such as to bring events in April and June 2021 in time. The claims brought about those events are **out of time**.

94. We moved to consider whether it is "just and equitable" to extend time in respect of allegations in April and June 2021. We have reminded ourselves that the onus is on the Claimant to show why we should extend time.

95. The Claimant explained that he was pursuing internal process through the grievance process commenced on 11 October 2021. On occasion that is a good reason to extend time, and the Tribunal does have sympathy with an employee trying to resolve matters internally before bringing a claim. Looking the dates in this case however, the disciplinary outcome was provided on 7 June 2021, and three months had already elapsed by the time the Claimant started the grievance process. In other words he was already out of time to present a claim about the events in April and June when he started the internal process.

96. This is not a situation in which the Claimant was unaware of matters suggesting discrimination that came to his attention some time after the event.

97. We have considered whether the Claimant would be shut out of a very meritorious claim. We do not find that he would be.

98. For these reasons, <u>we do not exercise the discretion under the just and equitable extension to extend time in respect of the allegations in April and June 2021</u>.

<u>Alternative case</u>

99. Nevertheless we have gone on to consider the claims regarding the April and June 2021 on their merits, in case we are wrong in the exercise of our discretion as to time limits.

Disability

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

Impairment

1.1.1 Did he have a physical or mental impairment, namely gout?

100. This is conceded by the Respondent. This is a physical impairment.

1.1.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

101. Disability: Equality Act 2010 - Guidance on matters to be taken into account in determining questions relating to the definition of disability

> C5. The Act states that, if an impairment has had a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur. (In deciding whether a person has had a disability in the past, the question is whether a substantial adverse effect has in fact recurred.) Conditions with effects which recur only sporadically or for short periods can still qualify as impairments for the purposes of the Act, in respect of the meaning of 'long-term' (Sch1, Para 2(2), see also paragraphs C3 to C4 (meaning of likely).)
>
> C6. For example, a person with rheumatoid arthritis may experience substantial adverse effects for a few weeks after the first occurrence and then have a period of remission. See also example at paragraph B11. If the substantial adverse effects are likely to recur, they are to be treated as if they were continuing. If the effects are likely to recur beyond 12 months after the first occurrence, they are to be treated as long-term. Other impairments with effects which can recur beyond 12 months, or where effects can be sporadic, include Menières Disease and epilepsy as well as mental health conditions such as schizophrenia, bipolar affective disorder, and certain types of depression, though this is not an exhaustive list. Some impairments with recurring or fluctuating effects may be less obvious in their impact on the individual concerned than is the case with other impairments where the effects are more constant.
>
> C7. It is not necessary for the effect to be the same throughout the period which is being considered in relation to determining whether the 'long-term' element of the definition is met. A person may still satisfy the long-term element of the definition even if the effect is not

> the same throughout the period. It may change: for example activities which are initially very difficult may become possible to a much greater extent. The effect might even disappear temporarily. Or other effects on the ability to carry out normal day-to-day activities may develop and the initial effect may disappear altogether.

102. The content of the ET1 claim form suggests that it took the Claimant 35 minutes to do a walk which the Respondent's Google map extract suggests should take 14 – 16 minutes. We note that the Claimant's evidence is that how long it took him to do this journey varied considerably. Some days were worse than others.

103. We find that walking is a day-to-day activity.

104. We find that the effect on the Claimant's difficulty in walking this relatively short distance was substantial.

Long-term or recurring

> 1.1.5 Were the effects of the impairment long-term? The Tribunal will decide:
> 1.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months? 1.2 years…?!
> 1.1.5.2 if not, were they likely to recur?

105. The Claimant's case is that he suffered from gout for over a year. What we have had to consider is whether he was a disabled person as at April, June and October 2021.

106. In the Claimant's disability impact statement he says that the symptoms of disability began 4 months before the diagnosis of gout on 15 May 2021, which we accept i.e. symptoms began in January 2021.

107. We move on therefore to consider whether the effects of the impairment were likely to recur. Following the guidance of the House of Lords (SCA v Boyle) likely to recur should not be read as more likely than not, but merely "could well happen".

108. As to long term, we have reminded ourselves of the correct approach, which is to consider the position at the material times in 2021. There are two particular points that we focus on – first 28 April, second 7 June 2021. The fact that gout did continue into 2022, as evidenced by a GP note dated March 2022 we should ignore for these purposes.

109. The relevant evidence we have is the discharge note 14 May 2021 and the GP fit note in which the Claimant signed off work for the period 4-18 June.

110. We have considered carefully the question of when it could be said that the Claimant's condition of gout "could well happen" that it would last 12 months. We

have concluded that as at 28 April 2021, before the claimant had even received a diagnosis, and on his own case three months after the onset of symptoms, it was simply too soon to say it "could well happen" that it would be longer than 12 months.

111. By contrast, turning to 7 June 2021, the date of the disciplinary sanction of first written warning, by this stage it had been ongoing for five months. The Claimant in the disciplinary meeting on 1 June 2021 stated about his condition "it's really painful". We note his use of the present tense. The Claimant mentioned there being a note ready for him to collect at the doctor's in relation to his footwear. There was a fit note submitted on 4 June 2021, in which the Claimant was signed off for 14 days.

Conclusion on disability

112. Although this is a somewhat difficult distinction to draw, by contrast with events in April 2021, we find by the time of the written warning given on 7 June 2022 it was likely (meaning could well happen) to be a long-term condition.

113. **We find that by 7 June 2021 and from this point onwards the Claimant was a disabled person**.

114. We find that the Respondent had knowledge of the Claimant's disability from this point as well. The Claimant was talking to his employer about the condition of gout on that day. It had been discussed earlier.

2. Discrimination arising from disability (Equality Act 2010 section 15)

115. We reiterate that the allegations in April and June 2021 are out of time, and we have not exercised discretion to extend time.

116. We are only dealing with these allegations *in the alternative*, the case we are wrong in the exercise of discretion as to time limits.

117. The allegation in October 2021 was in time.

2.1 Did the respondent treat the claimant unfavourably by:

2.1.1 On 28 April 2021, 8 October 2021 Mr Grant shouting and threatening the claimant for wearing trainers;

April 2021 incident

118. Mr Grant does not accept that he was shouting. We accept that that is his honest perception. The Tribunal's observation is that Mr Grant's manner is brusque and

straight to the point. He is blunt in his communication style. The Claimant's communication style is different.

119. Mr Grant's communication style is summarised quite well by a former colleague Ms Huxtable at paragraph 28 of her witness day.

> "More generally, whilst I feel that David could sometimes handle situations in a manner which is more abrupt than I would have handled them, I do not think he is malicious or unprofessional at all." –

120. In her oral evidence she explained that David was quite direct and not "fluffy" like herself, meaning that she would engage in more social pleasantries before getting to the point whereas that was not his style.

121. We note that the Claimant's version of events at paragraph 9 of his witness statement suggested threats in relation to the incident on 21 April about the fire alarm, – but not in relation to the trainers. The Claimant does say that Mr Grant questioned why he had trainers on. We do not find that on 28 April Mr Grant was threatening the Claimant about his trainers.

<u>October 2021 incident</u>

122. As to 8 October 2021, we do not find that the Claimant's trainers were a feature of this incident at all, still less that Mr Grant was threatening him about trainers.

> 2.1.2 Disciplining the claimant for wearing trainers, culminating in issuing him with a written warning on or around 7 June 2021.

123. It is not entirely right to characterise the written warning given on 7 June as solely "for wearing trainers", given the whole picture of the Claimant's failures to wear uniform and the history of this having occurred.

124. At the investigation meeting on 17 May 2021, the Claimant admitted wearing a T-shirt and the Respondent's soft shell jacket but with a shirt, tie and shoes missing. The Claimant admitted that this was not acceptable. In fact it seems from the conversation in this meeting that the Claimant did not even possess a company tie.

125. There was also the disciplinary hearing on 1 June 2021 at which he reiterated his admission in this respect. It must also be noted that Mr Grant, and others, had noted the Claimant's failure to comply with the uniform policy on more than one previous occasion.

126. The Claimant also admitted wearing EarPods which he was not supposed to do. Mr Grant's concern about this was that it was against policy and it appeared to client and others that someone was not paying attention.

127. It is clear however that the topic of the Claimant trainers is mentioned in the letter of 7 June, but also so is the mitigation of the fact that he suffered from gout. It was recommended that he obtain a doctor's certificate to confirm this condition.

128. Trainers are however undoubtedly part of the picture, and specifically referenced in the letter confirming the first written warning.

Arising from disability

2.2 Did the following arise in consequence of the claimant's disability:

2.2.1 The claimant wearing trainers.

129. The Respondent wisely does not dispute the link with trainers.

Because of trainers

2.3 Was the unfavourable treatment set out at paragraph 2.1 above because of the claimant wearing trainers?

130. In respect of **the incident on 28 April 2021** –

131. This cannot succeed because we find that the Claimant was not disabled at this stage. Nevertheless we have gone on to deal with this point.

132. |The Claimant's oral evidence was that Mr Grant was initially upset with because of the fire alarm incident. Mr Ahmed emphasised this more than once.

133. The query about the trainers we find was no more than a parting shot, but was not the reason for Mr Grant's displeasure. We do not find that this incident was because of the Claimant wearing trainers.

134. In relation to the **8 October 2021 incident**, our finding is that this incident did not relate to trainers at all, based on the content of the Claimant's witness statement and what he said about it in internal meetings at the time. We think his reference to trainers being a part of this in his oral evidence he was mistaken.

135. Finally, dealing with the issuing of a **first written warning on 7 June 2021** – as noted above, the trainers were part of the picture which included missing shirt, missing tie, jacket, EarPods and a history uniform of infractions. Additionally, with regard to the trainers, it was acknowledged that gout was a mitigating circumstance, but the employer had a particular concern that trainers be smart and fully black, and that there be a doctor's certificate confirming the Claimant's medical condition and the need to wear trainers.

136. We have posed to ourselves the question whether the trainers were more than trivial element of this overall reason.

137. We note is that Mr Grant specifically said that with a doctor's note they would allow the Claimant to wear trainers, but with the caveat that they must be smart plain black trainers. This is evidence of Mr Grant's concern about non-black detailing on the trainer. We also notice his final comments in the disciplinary meeting about the "number of times we have had to raise these issues" – the significance of that being the element of repetition but also issues clearly indicating that there were a number of problems.

138. This is finely balanced but we find that the trainers were more than trivial element leading to the issuing of the first written warning. This is based on the letter itself, which refers to "specifically that you were wearing trainers".

Respondent's justification defence

2.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondent has been given permission to amend its response after the claimant clarifying his case, and may set out its justification to any alleged unfavourable treatment.

139. We accept that the requirement for a smart and identifiable security guard uniform is a *legitimate aim*, since this is what clients are paying for and it is plainly important that users of the building quickly identify the identity of a security guard.

2.5 The Tribunal will decide in particular:

2.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

140. The Tribunal considers that a First Written Warning is a comparatively minor sanction. The Claimant had a track record of uniform infractions.

141. We find that this sanction was appropriate and reasonably necessary in the circumstances.

2.5.2 could something less discriminatory have been done instead;

142. Given the acknowledgement of the mitigating circumstances and the clear guidance to the claimant to obtain medical evidence, it is not clear to us that there was a significant discriminatory effect on the Claimant.

2.5.3 how should the needs of the claimant and the respondent be balanced?

143. We have not dealt with this is a separate point. This is reflected in our reasoning above.

2.6 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

144. Our finding is that the Respondent knew or to have been aware that the Claimant was disabled by 7 June 2021.

Summary regarding claim of disability discrimination

145. The claim of disability discrimination brought under the Equality Act does not succeed.

146. To summarise our reasons, at the time of the April 2021 incident the Claimant was not disabled and this claim was brought out of time.

147. The claim brought in relation to the June 2021 disciplinary sanction is out of time and in any event the sanction was justified.

148. The October 2021 incident, which was in time we do not find related to trainers at all.

WORKING TIME REGULATIONS

3. Rest breaks (Working Time Regulations 1998)

Time/jurisdiction

149. The claim in relation to rest breaks from 12 August 2021 onward is in time, as the Respondent conceded.

150. As to events before 12 August, the Claimant has not put forward any reason why it was not reasonably practicable to present a claim in respect of dates before that. Accordingly this period is out of time and time is not extended.

Jurisdiction/refusal to permit [regulation 30(1) WTR]

151. Under regulation 30(1) an employee can only present a complaint in relation to rest breaks to the employment tribunal if the employer has refused to permit him to exercise his right under regulation 12(1). This is the gateway through which any claim must be presented. Although this was not a point articulated in the list of issues, it goes to jurisdiction. The Tribunal could not simply disregard it.

152. Did the employer refuse to permit Mr Ahmed to exercise his right to rest breaks?

Response to grievance

153. Mr Ahmed raised a concern about rest breaks and specifically his legal entitlement on 11 October 2021 in his grievance. Four days later on 15 October 2021 the respondent changed the rota to give him an extra hour break and with no reduction to his wages, with effect from 18 October. We find the employer promptly remedied the insufficient rest breaks in a reasonable time frame in response to the grievance and did not refuse to permit him to exercise his right *at that stage*.

Pre-grievance

154. Going *further back in time*, in the period 12 August – 11 October 2021, should the Respondent should have granted the Claimant a break without having to be asked?

155. We have considered the decision in *Grange v Abellio London Ltd* [2017] ICR 287, EAT discussed above. It is clear from *Grange* that "refusal to permit" under regulation 30(1) should be read purposefully and that regulation 12(1) imposes a positive duty on an employer to provide a rest break with no requirement that the employee assert the right. In our judgment, however a "refusal" must be a conscious decision. An employer must be aware of the circumstances in which a full statutory rest break is not enjoyed in order for there to be a refusal.

156. Mr Ahmed situation is different to Grange. Mr Ahmed was given 45 minutes to walk what for most people would be a 15 minute walk. There was a 30 minute break built in to his timetable. This would ordinarily provide 10 minutes over and above the 20 minute break. In other words the working arrangements provided for more than a statutory rest break. The problem only arose in his case when his gout flared up. This was not a situation analogous to the *Grange v Abellio* situation where an employer knowingly created a timetable which denied employees rest breaks.

157. We have considered whether Ms Huxtable should have acted quicker. Based on her evidence she knew that the Claimant was raising a difficulty about the effect of walking time following their conversation toward the end of September, some time after 22 September. We note however in her statement, which we accept, that at that stage she still believed the Claimant should have enough time to complete his walk and take a break. She had been alerted to the problem, but did not fully appreciate the extent of it.

158. It was only when the grievance came in on 11 October 2021 that we find the Respondent realised the extent of the problem and made the change in the rota four days later.

159. We do not find that these circumstances should be characterised as a refusal to permit the Claimant to take a rest break. **It follows that by the operation of regulation 30(1) there is no jurisdiction to present a claim of breach of regulation 12**.

160. If we are wrong about that we have gone on to look at the substance of the WTR claim *in the alternative*.

Relevant period

3.1 What is the relevant period for consideration of the claimant's complaints having regard to the time limits in Regulation 30(2) and 30B of the WTR?

161. The relevant period commences three months back from ACAS period – i.e. 12 August 2021 to 18 October 2021 when Respondent made an adjustment.

162. That is the period we are considering in this claim.

3.2 Was the claimant in the relevant period entitled to rest breaks under Reg 12 WTR?

Entitlement to rest breaks

163. Yes the Claimant was entitled to a rest break given that he was working for longer than 6 hours.

Did the Claimant have the benefit of rest breaks?

164. Based on the Claimant's working pattern in August 2021 he had a 15 minute "window" to get from 78 Cornhill to the next client site at Cable House. Google maps suggests a walking time in the region 7 – 9 minutes.

165. The regulations provide that the rest break should be an uninterrupted period of not less than 20 minutes (regulation 12 (3)). This could not constitute a rest break, even if the Claimant had been able make the distance in 7-9 minutes, which we find at the time of his gout flareups could not.

166. Prior to the change on 18 October 2021 the Claimant had 45 minutes to get from Cable House leaving at 14:15, to get to the next site CAPCO by 15:00. The best evidence of how long this would ordinarily take is the Google maps print outs which show that this was a journey of 0.8 miles which might ordinarily be expected to take 14-16 minutes. Taking the midpoint for simplicity – 15 minutes – this would give an able-bodied employee a 30 minute break i.e. 10 minutes more than required under the Working Time Regulations.

167. The Claimant's evidence is that when his gout flared up it was taking him longer, but this varied according to how bad it was. If it took 35 minutes as per the claim form, he would only get a 10 minute break. If he managed to do the walk in 25 minutes, which is slow but a bit faster, he would get the statutory 20 minute break. If it took 45 minutes or longer, which he says it did on occasion – he would not have got a break at all.

168. It seems based on the evidence we have received from the Claimant of good days and bad days that on some occasions he did not get statutory break, whether on other days he did get some break, but not the required 20 minutes.

169. It is difficult based on the evidence to make precise findings as to which days the Claimant did and did not get a statutory rest break. We are clear however that there were days in the period 12 August – 15 October 2021 in which he did not get a statutory rest break because of the extra time it was taking him to walk when his gout had flared up.

Security & surveillance exception

3.3 Did Reg 21(b) WTR apply so as to disapply any entitlement under Reg 12 to rest breaks? In this regard, was the claimant engaged in security and surveillance activities requiring a permanent presence in order to protect property and persons?

170. The Claimant was involved in security and surveillance activities.

171. Did it require a permanent presence? We find that the Respondent did require a permanent presence in order to offer its security and surveillance activities. We find that regulation 21(b) is engaged.

Equivalent period of compensatory rest

3.4 If Reg 21 operated to disapply the entitlement to rest breaks under Reg 12, did the respondent allow him to take an equivalent period of compensatory rest, or afford him such protection as may be appropriate in order to safeguard his health and safety under Reg 24?

172. Under regulation 24 (a) was there was an equivalent period of compensatory rest? Was the Claimant eating his lunch at the CAPCO might be an equivalent period of compensatory rest? It is clear that the Respondent still expected him to respond to calls during this period.

173. The Court of Appeal provided guidance on what constitutes a rest break in the case of Hughes. Applying that guidance, we find that this **was not** an equivalent period of compensatory rest, since the Claimant was expected to respond to calls.

174. We have considered regulation 24(b), i.e. whether exceptional circumstances in which it was not possible objectively to offer compensatory rest? The Tribunal does not find that these were exceptional circumstances in which it was not possible, objectively, to offer compensatory rest. From 18 October onward, the Respondent did change the rota. This is clear evidence that it was possible to offer rest or compensatory rest.

Protection to safeguard health & safety

175. We have not received any evidence about protection to safeguard health and safety, so we cannot make a finding about that.

176. We do not find that the Respondent's defence under regulation 24 WTR is made out.

Compensation

3.5 If the claimant's complaints are well-founded what compensation would it be just and equitable for the respondent pay to him having regard to the respondent's default and the loss sustained by the claimant?

177. The Tribunal did not make an award due to the absence of jurisdiction under regulation 30 discussed above.

178. Had the claim being made out, on these facts the Tribunal would very likely either have made no award, or made a very minimal award, for the following reasons:

178.1. The Claimant did not suffer any financial loss.

178.2. The period of default following the raising of the grievance was four days. The degree of default, we find was minimal.

178.3. This was a case we find in which the employer only belated became aware of the extent of the problem and once it did so took action promptly. We acknowledge that there was a period when the Claimant was putting up with the problem and struggling on. Mr Ahmed did not initially make it clear to an appropriate person at the Respondent so that they could take action. We do not consider it would be just to make an award for compensation for a period before the Respondent had knowledge of the problem.

COMMENT

Mediation?

179. The Tribunal made the following observation in our oral reasons. This is not part of our decision on liability, but having heard the evidence, we considered it might of benefit for the parties to have this in writing.

180. The Tribunal is conscious of the fact that the Claimant remains an employee of the Respondent. There is an opportunity to improve relations and establish a better style of communication.

181. On the one side we can see that the Claimant's approach to his uniform and matters such as wearing ear pods is a source of frustration to the Respondent – they are entitled to expect their security officer staff to be smart and in uniform, and if clients complain that causes the Respondent a genuine problem.

182. On the other hand, we find that David Grant's style of communication which has been described as abrupt has plainly upset the Claimant. It may be Mr Grant's style and he may be under pressure in his role. A little bit more time and consideration in communicating with the Claimant however might have avoided the grievance and avoided this litigation altogether.

183. It is not for this Tribunal to decide what happens next. Our experience is that often a workplace mediation, even an informal one might be a good way forward to allow the parties to put this behind them and move on.

_____

Employment Judge Adkin

Date 23 December 2022

WRITTEN REASONS SENT TO THE PARTIES ON

23/12/2022

FOR THE TRIBUNAL OFFICE

Notes

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