



EMPLOYMENT TRIBUNALS

Claimant: Ms A Normoyle

Respondents: Qatalog Ltd (1)
Mr M Tariq (2)

Heard at London Central Employment Tribunal On: 7, 8, 9 February 2023
16 February 2023 (in chambers)

Before: Employment Judge Davidson
Ms L Simms
Ms J Cameron

Representation

Claimant: Mr A Line, Counsel
Respondents: Mr D Black, Counsel

RESERVED JUDGMENT

The claimant's complaints of disability discrimination fail and are hereby dismissed.

REASONS

Issues

The issues for the hearing were as follows:

Direct Discrimination – S.13 of the Equality Act 2010

1. Was the Claimant treated less favourably by the First Respondent and/or the Second Respondent than the First and/or Second Respondent treats or would treat others? The Claimant relies on the following alleged treatment:-

- 1.1. On 2nd June 2021, the Second Respondent stated that a number of team members including himself have had mental health issues and they somehow figure them out.

2. While it is conceded that the Claimant had a disability at the material time, did the First Respondent and/or the Second Respondent have actual or constructive knowledge of the Claimant's disability with the meaning of section 13 and Schedule 1 of the Equality Act 2010 by 2 June 2021?
3. If the Claimant can prove less favourable treatment, by reference to the answer to issue 2, was the reason for that treatment because of the Claimant's disability?
4. The Claimant relies upon hypothetical comparators.
5. Are there facts from which the Tribunal could decide, in the absence of any other explanation that the First Respondent and/or the Second Respondent discriminated against the Claimant?
6. If so, has the First Respondent and/or the Second Respondent proven that it did not discriminate against the Claimant?

Discrimination arising from disability – S.15 of the Equality Act 2010

7. Did the Respondents treat the Claimant unfavourably?

The Claimant relies upon the following alleged act of unfavourable treatment:-

- 7.1. On 2nd June 2021, the Second Respondent stated that he thought that maybe the Claimant was not the right fit for the role (leading to the Claimant's dismissal) in response to the Claimant stating that she was coming off her medication and that she was concerned about the possible side effects / withdrawal symptoms of doing so and that it had adversely affected her including altering her brain chemistry.
 - 7.2. On 2nd June 2021, the First/Second Respondent sent the Claimant an email confirming the termination of her employment and confirming his view that the Claimant was not a good fit for the role.
8. If so, was the unfavourable treatment done because of something arising in consequence of the Claimant's disability? The Claimant relies upon the possible side effects/withdrawal symptoms of coming off her medication including altering her brain chemistry and its potential impact on her performance at work.
 9. If so, can the Respondents show that the treatment was a proportionate means of achieving a legitimate aim?
 10. Did the First Respondent, and/or the Second Respondent know that the Claimant was disabled?
 11. If not, should the First Respondent and/or the Second Respondent, have reasonably been expected to know that the Claimant was disabled? If so, by what date?

Harassment – S.26 of the Equality Act 2010

12. Did the Respondents do the following alleged acts:-

- 12.1. On 2nd June 2021, the Second Respondent ignored the Claimant's Slack message that notified him of her intention to speak to him about her worsening mental health.
- 12.2. On 2nd June 2021, the Second Respondent stated that a number of team members including himself have had mental health issues and they somehow figure them out.
- 12.3. On 2nd June 2021, the Second Respondent informed the Claimant that her role as Executive Assistant was to be dependable and if she dropped something, 30 plus people could be affected.
- 12.4. On 2nd June 2021, the Second Respondent showed very little concern for the Claimant and the Claimant was not given an opportunity to ask anything in response to the Second Respondent dismissing her.
- 12.5. On 2nd June 2021, the First/Second Respondent sent the Claimant an email confirming the termination of her employment and confirming his view that the Claimant was not a good fit for the role.
- 12.6. On 2nd July 2021, the Second Respondent's response to the letter of claim raised various issues with the Claimant's performance which had not been raised with the Claimant during her employment.

13. If so, were any of the alleged acts unwanted conduct?

14. If so, did that conduct related to the Claimant's disability?

15. If so, did the conduct have the purpose of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating and offensive environment for her?

16. If no, did it have that effect? The Employment Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for conduct to have had that effect.

Evidence

17. The tribunal heard evidence from the Claimant on her own behalf and from the Second Respondent and Marta Kutt on behalf of the Respondents. The tribunal also had a bundle running to some 319 pages with some additional documents added during the course of the hearing.

Facts

18. The tribunal found the following facts on the balance of probabilities.

19. The First Respondent is a technology company founded by the Second Respondent in July 2019 to provide a digital work hub for modern workplaces.

20. The claimant has the disability of depression and anxiety.
21. She came to the UK from the USA before joining the First Respondent. In the US, the Claimant was on medication to treat her depression which was very effective. When she came to the UK, she became aware that this medication was not licensed in the UK to treat depression. This caused her a lot of anxiety, trying to navigate a way to continue with this medication or to find alternative medication, which would involve withdrawal from her existing medication with potential side effects.
22. The Claimant was recruited in December 2020 and started working for the First Respondent as the Second Respondent's Executive Assistant (EA) in January 2021. Her salary was £56,330 with a long-term expectation to include equity. She was the first person to occupy the role of EA to the Second Respondent. The business was growing, and the Second Respondent needed administrative support to allow him to concentrate on his executive role. The Claimant had worked for many years as an EA in tech companies but never before for a CEO.
23. Both the Claimant and the Second Respondent mostly worked from home but were in touch with each other daily, generally either by Zoom video call or by Slack messaging system. We note that the Claimant and the Second Respondent had numerous Zoom meetings and Slack interactions, usually more than one a day. It is entirely possible that the parties have misremembered the actual dates of these, and we will make findings about what we believe has been said although we will not always be able to make findings about the actual date an exchange took place.
24. On 22 January 2021, the Claimant complained of a headache, saying she had been getting visual migraines during the year. The Second Respondent expressed sympathy and offered a remedy which had been useful for him.
25. On 27 January 2021, the Second Respondent asked the Claimant to cancel a meeting. She acknowledged the request but did not action it. She later apologised, explaining that she was doing something else, then a delivery came to the door so she got distracted and forgot.
26. In early February 2021, the Second Respondent asked the Claimant to contact a candidate for the Senior Product Design role explaining the delay in the recruitment process and he asked to be copied into the email so that the candidate would know that the CEO was involved in the process. In the event, the Claimant sent the message without copying in the Second Respondent. The candidate then withdrew from the process and the Second Respondent was unable to follow up with the candidate.
27. Later than day, the Claimant told the Second Respondent that she thought she might be experiencing vertigo and she had booked a GP call for the next day. the Second Respondent expressed sympathy and suggested that she took the day off.
28. On 26 February 2021, the Second Respondent asked the Claimant to set up a Zoom meeting with a third party but she forgot to create the Zoom link when sending the message. She later apologised to the Second Respondent.

29. On 4 March 2021, the Second Respondent asked the Claimant who was doing the 'launch 2021 deck'. The Claimant did not reply because his message 'didn't ping for some reason'.
30. On 5 March 2021 the Claimant had a fever and the Second Respondent gave her some advice on how to use NHS services as she was new to the UK. She then told him that she had been diagnosed with a kidney infection, which was being treated.
31. On Friday 26 March 2021, the Second Respondent and the Claimant were discussing changes to the calendar for the following week. The change was to shorten a meeting from 45 minutes to 30 minutes. The discussion ended towards 6pm, which is after the Claimant's normal finishing time. She had arrangements that evening and did not update the calendar immediately after the discussion, intending to do so first thing on the Monday morning. At 8.15am on Monday 29 March, the Second Respondent noticed that the calendar had not been updated for the week that was about to start. The Claimant explained that they had finished late on Friday and she was intending to make the change when she started work at 9am. She told us that the change was a minor one that was not detrimental and therefore she did not consider it urgent.
32. On 30 March 2021, the Claimant had a conversation over Slack with Marta Kutt, who was then the Operations Manager. Her role extended to the technology aspects of staffing but she was not HR. The Claimant was asking Marta Kutt about the health insurance cover and how it interacted with the NHS, referring to her 'pre-existing condition' without specifying what it was, although she referred to being referred to a psychiatrist. The Claimant told Marta Kutt that she had not talked to the Second Respondent about this or the condition that was referring to and asked Marta Kutt to keep this between the two of them. The Claimant told Marta Kutt that it was to do with her mental health which made the situation even more stressful and scary. Marta Kutt suggested potentially raising it with the Second Respondent if the Claimant's only option was private medical care, to see if he could help.
33. In April 2021, the Claimant's stock of medication was running out and she started to wean herself off her long-standing medication. The Claimant's evidence is that this caused side effects, including inability to concentrate or to perform her role. Her claim form suggests that it was only on 2 June 2021 that she intended to put the First Respondent on notice that she was beginning to feel the effects of coming off the medication and the potential impact on her performance and attendance.
34. On one occasion, the Claimant asked the Second Respondent if she could move their regular meeting time as she woke up with a headache and the paracetamol had not yet kicked in. The Second Respondent expressed sympathy and said it was fine to move the meeting. He also gave her the option to cancel if she didn't feel better later.
35. At about this time, the Claimant was involved in the First Respondent's introduction of a new benefit called Talk Space, a confidential help-line for mental health issues.

36. There was a slack exchange between the Second Respondent and the Claimant about the communication of the Talk Space benefit. There appears to have been a misunderstanding about whether the email to staff was ready to go as it required a link to the Talk Space provider, which was not working. In the end, the announcement was made to staff without the link, which was sent the following day.
37. On 22 April 2021, the Claimant had another Slack exchange with Marta Kutt about her mental health struggles. She noted that the absence of HR within the First Respondent meant there was nobody to talk to internally as she did not want to discuss these personal issues with the Second Respondent. Marta Kutt was supportive and offered to help find solutions if that was what the Claimant wanted. Marta Kutt also gave the Claimant her personal experience of having shared information with the Second Respondent, who was helpful to her. The Claimant told Marta Kutt that she had been prescribed specific medications for ten years in the US and that her GP told her she may have to come off these medications and switch to something else until they can find a solution. She said it was scary and dangerous in her opinion and that she would let Marta Kutt know if she needed anything from the First Respondent.
38. On 29 April 2021, the Claimant told the Second Respondent that she wasn't feeling great, but she continued to deal with his diary issues. The following day, 30 April 2021, the Claimant told the Second Respondent that she was feeling worse than yesterday. The Second Respondent expressed sympathy and told her to rest.
39. On 4 May 2021, the Claimant told the Second Respondent that her bi-weekly lunchtime therapy sessions were moving to weekly mid-afternoon sessions.
40. During the week beginning 3 May 2021, the Claimant and the Second Respondent had discussions about the Claimant's mental health. The Claimant's evidence is that there were two meetings, on 3 May and 7 May. The Second Respondent's evidence is that there was only one meeting, although he was not sure what date in that week it was.
41. We find that there was no meeting on 3 May, which was a Bank Holiday. It is clear from all the evidence that it is extremely unlikely that there would have been a meeting on a Bank Holiday.
42. We note from the exchanges between the Claimant and Marta Kutt that, on 6 May 2021, Marta Kutt asked how the meeting 'yesterday' went. We therefore find that on the balance of probabilities the meeting took place on 5 May 2021.
43. It is apparent from this exchange of messages that Marta Kutt regarded the Claimant's issues as relating to things 'outside of work'.
44. We find that the Claimant told the Second Respondent that she was struggling with her mental health and she wanted to bring this to his attention. She did not specify what the condition was or the specific issue about coming off her medication. The Second Respondent asked if she was able to carry out her duties and she replied that she needed more guidance about what was expected of her. As a result, the Second Respondent prepared a 'Handbook', with details of the role and the Second Respondent's expectations, for her

personal use, which he gave her the following week. We find that the preparation of the Handbook by the Second Respondent illustrated an investment in the Claimant, which he was unlikely to make if he did not intend to make the relationship work.

45. The Claimant states that she had a second meeting with the Second Respondent at which they discussed the need for more guidance, which resulted in the Handbook. Her evidence is that this was a good meeting and the most positive she had felt. We find that there was no second meeting and these conversations all took place at the same meeting on 5 May 2021.
46. On 12 May 2021, the Claimant rescheduled a meeting with an investor without the Second Respondent's express confirmation that the new time was convenient for him. The Claimant believed that she had his implied confirmation as he had not replied to a message asking about the change although he had replied to a later message. We find that this specific requirement for reschedules always to be expressly confirmed was added to the Handbook after this incident but that the Second Respondent had assumed someone of the Claimant's experience would have known this anyway.
47. On 17 May 2021, a couple of employees asked the Second Respondent if everything in the business was OK as they had not seen the regular Monday morning update for the team, which the Claimant had instigated and sent out weekly. The Second Respondent raised this with the Claimant who told him that her reminder to send the update had gone off when she was attending a team meeting and she had forgotten to send it.
48. On 21 May 2021, the Second Respondent told the Claimant that he was likely to be late for a meeting, asking her to let the person know. She did not pick up the message as she was away for an hour for lunch.
49. Every fortnight, there is a Company-wide 'All Hands' presentation for which a 'deck' (slideshow) needs to be prepared with input from all the department heads. It was the Claimant's responsibility to co-ordinate this and ensure it was ready for the meeting. The Second Respondent suggested that she started the preparation for the next meeting as soon as the previous meeting finished as it was such an important event. The Second Respondent needed to be satisfied that the deck was finished at least a day before the meeting.
50. There was an All Hands scheduled for 3 June 2021. On the afternoon of 1 June, the Claimant told the Second Respondent that she was not going to be ready for the review meeting at 4.30 that afternoon as she had been off on Friday 28 May for pre-booked holiday and Monday 31 May had been a bank holiday. The Second Respondent was irritated that he only found out so near to the meeting that she was running behind, particularly as she should have started two weeks before. He asked her to send him a draft set of slides that day so that they could catch up the next morning.
51. The Claimant also blamed the delay on having to deal with the 'Chaplin' deck. The Second Respondent's evidence was that this task should not take more than three minutes as it simply involved copying a previous deck and renaming it Chaplin.

52. On the morning of 2 June 2012 at 8.40am, the Second Respondent asked Marta Kutt when she would be free to meet. She replied at 8.50am, and the Second Respondent sent her a Zoom link by return. We find that the meeting took place almost immediately after the Zoom link was sent. The Second Respondent told Marta Kutt that he had decided to terminate the Claimant's employment and that he would let her know when he had spoken to her so that she could disable the Claimant's access to the system. We find that this decision was that of the Second Respondent alone and he did not discuss it with Marta Kutt before making the decision or communicating it to the Claimant.
53. At 9.11am that morning, the Claimant sent a message to the Second Respondent saying that she needed to talk to him about her mental health again, explaining that she was having trouble with coping with 'pretty much anything right now, showering, eating, leaving my house'.
54. The normal 10am meeting took place and the Second Respondent informed the Claimant that she was being dismissed because she was not a good fit for the role. Both parties agree that the meeting was very short. The Claimant's recollection is that the Second Respondent made a number of comments at this meeting. The Second Respondent does not necessarily dispute the comments (although he disputes the details) but states that these conversations did not happen in the dismissal meeting.
55. We find that the Second Respondent did say to the Claimant that there were other people within the organization who had mental health issues and they managed to work despite this. We find that the Second Respondent had the intention of being supportive by suggesting to the Claimant that she was not the only one facing these issues and that the First Respondent had always tried to find a solution. However, we do not find that this exchange took place on 2 June 2021.
56. We find that the Second Respondent did say to the Claimant that, if she made errors, it affected him and the whole business, as he was the CEO. His evidence to us was that a minor administrative error, which appears to be trivial, could have significant consequences for his executive function as CEO. We find that he said this during the dismissal meeting.
57. We find that the Claimant did not say anything at this meeting other than she thought it was unfair. The Second Respondent paused so that she could comment, but she did not take that opportunity. We do not find this surprising as she was clearly shocked by what had happened.
58. Immediately after the meeting, at 10.06am, the Second Respondent informed Marta Kutt that the Claimant had been dismissed and she was then removed from systems access.
59. Later that day, the Second Respondent sent a follow up email to the Claimant confirming the dismissal, saying he was 'sad that we couldn't find a good fit for the role' and wishing her all the best and remarking on her excellent qualities. She was put on garden leave for the one month notice period.

60. On 22 June 2021, the Claimant's solicitors wrote to the First Respondent at its registered office setting out the Claimant's claims against the First Respondent and Second Respondent for disability discrimination.

61. On 2 July 2021, the Respondents' solicitors sent a response drafted by the Second Respondent in which he set out a number of problems that had arisen during her employment and explaining his decision to terminate her employment due to performance issues which had not been resolved despite giving her support. He denied the Claimant's claims.

The Law

Direct discrimination

62. Direct discrimination means less favourable treatment in comparison to a comparator because of a protected characteristic. S. 13 EA 2010 defines direct discrimination as:

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

Discrimination arising from disability

63. Under s. 15 EA 2010

(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.

Harassment

64. Section 26 EA 2010 provides that:

(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

...

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

(a) the perception of B;

(b) the other circumstances of the case;

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

65. To amount to harassment, A's conduct must have the purpose or effect of violating B's dignity or creating an intimidating, hostile, humiliating or offensive environment for B. Where B claims that the conduct has this effect (although this was not A's purpose), the tribunal must consider whether it was reasonable for the conduct to have that effect. This involves both subjective and objective questions.

Determination of the Issues

Direct Discrimination – S.13 of the Equality Act 2010

66. We find that the comment about a number of team members, including the Second Respondent himself, having had 'mental health issues and somehow figuring them out' was not made on 2 June 2021. We find that Second Respondent did make the comment (or something similar) on another occasion but we do not think the comment amounted to less favourable treatment.

67. We find that the comment was intended to be supportive and this is the natural conclusion to draw from the words used. We have also taken into account the Second Respondent's generally supportive attitude to the Claimant when she was unwell or made mistakes. We also find it consistent with the Second Respondent's general approach to problems, which is to find solutions, for example he drafted the Handbook when the Claimant told him that she was struggling to understand what was expected of her. He thought this was a more constructive way of letting her know what improvement was expected than subjecting her to a formal performance management process.

68. We note that the Second Respondent was sympathetic to the Claimant whenever she presented with ill-health. This was not infrequent and was for a number of discrete issues. When the Claimant made errors, the Second Respondent was quick to move on and he attempted to work with the Claimant to make sure she was able to do the role effectively.

69. We also note the Second Respondent's decision to introduce a benefit aimed at supporting employees' mental health as evidence that he understood the impact of mental health issues on employees and put in place a potential solution to help them.

70. We find he would have made the same comment to another employee without a disability in the same circumstances.

71. If we are wrong, and the treatment was less favourable, we find that it was not because of the Claimant's disability. The Second Respondent would have expressed the same sentiment to any employee who disclosed that they had issues, whether or not there was a disability involved. We accept that the Second Respondent wanted to send a positive message and to tell the Claimant that there were practical ways of supporting her which had worked for other people.

72. The Claimant's dismissal was undoubtedly procedurally unfair but this is not an unfair dismissal claim and she did not have unfair dismissal rights. There is nothing to suggest that the Second Respondent would have gone through a full

procedure with another employee who did not have unfair dismissal rights who did not have a disability. We therefore draw no inference from the failure to follow a performance management procedure.

73. We therefore find that there are no facts from which we could decide that the First Respondent or the Second Respondent had discriminated against the Claimant.

Knowledge

74. We find that the First Respondent and the Second Respondent had knowledge that the Claimant was struggling with mental health issues but we find that this does not fix them with actual knowledge that she had a disability as they had no details of the impairment, its impact on her ability to carry out day-to-day activities or that it was long term. The Court of Appeal in *Gallop v Newport City Council [2014] IRLR 211* confirmed that knowledge means knowledge of the impairment and that the impairment has a substantial and long-term effect on the Claimant's ability to carry out normal day-to-day activities.

75. The Claimant's occasional short term absences did not, in our view, create a line of enquiry that could lead to a conclusion that she had a disability. The reasons were diverse and not apparently connected with mental health.

76. Similarly, the various errors made by the Claimant did not, in our view, suggest an underlying health issue that the Respondents should have picked up on. They were trivial errors, of the sort anyone could make, and were for various different reasons. The Claimant provided a cogent explanation for each error and did not blame her health, even in situations where she had disclosed that she was not feeling well.

77. We find that the First Respondent and the Second Respondent were aware that the Claimant used the word 'struggling' and that she was having therapy. However, the Second Respondent's evidence is that he understood that 'struggling' referred to difficulties with performing the role effectively, which led to the Handbook and that 'therapy' could cover a number of matters, which did not necessarily indicate a disability. The Second Respondent took the active decision that it was inappropriate to ask her further questions as these were private and sensitive matters. It was up to her whether she wanted to let him know more.

78. The Second Respondent made enquiry of the Claimant if, in the light of the information she gave him, she was able to do her job. Her response was that she needed more guidance, rather than that her impairment was having an impact on her ability to do her work.

79. We find that, from her conversations with the Claimant, Marta Kutt had actual knowledge of a long-term impairment as she was aware that the Claimant had been on medication for ten years and was facing the prospect of moving to different medication. However, she did not have actual knowledge of the impact of this on her ability to carry out day-to-day activities. Other than expressing her fear, the Claimant did not identify what side effects she anticipated from the change in medication or how this would affect her work.

Marta Kutt was respectful of the Claimant's privacy and offered to help more if the Claimant wanted her to. She also honoured the Claimant's express request not to share any information about her health with the Second Respondent.

80. The issue on constructive knowledge is whether the Respondents should have made more enquiries into the Claimant's situation. The Respondents did not need to have constructive knowledge of the Claimant's diagnosis but they would need to show that it was unreasonable for them to be expected to know that the Claimant had an impairment that was having a substantial and long-term effect.
81. The EHRC Code of Practice on Employment 2011 provides that employers should consider whether a worker has a disability event where one has not been formally disclosed and must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.
82. We find that the various reasons given for absences and mistakes did not flag that the Claimant had an impairment. She herself raised it with the Second Respondent in May 2021 and his follow-up enquiry related to the impact of her (unspecified) mental health issues on her work. She did not give him details of her diagnosis or its effects (for reasons which are well understood by the tribunal) and asked for more guidance in the role. We find that there was nothing in that exchange which suggested that it was appropriate for the Second Respondent to make further enquiry. From her conversations with Marta Kutt, we note that the Claimant had expressed her reluctance to discuss these matters with the Second Respondent.
83. Marta Kutt had more information than the Second Respondent about the Claimant's situation. However, she was only aware of what the Claimant told her. She offered to talk to the Claimant and to offer her ideas for solutions but made it clear that she was not pushing the Claimant to share anything she was not comfortable with sharing. The information disclosed by the Claimant to Marta Kutt was that she was struggling with her mental health because she was due to come off her medication and was unsure about how the alternatives would work. She did not indicate any inability to carry out day-to-day activities or any impact on her work.
84. We therefore find that neither the First Respondent or the Second Respondent had actual or constructive knowledge of the Claimant's disability.

Discrimination arising from disability – S.15 of the Equality Act 2010

85. We find that the Second Respondent did not say the Claimant was not the right fit in response to any comment from the Claimant about her coming off her medication. We find that the Claimant intended to inform the Second Respondent of the potential impact of her coming off her medication but events overtook her and she never got the chance.

86. We find that the Second Respondent had reached the decision to terminate the Claimant's employment because he did not think she was right for the role. He reached this conclusion on the basis of repeated minor errors, culminating in her failure to action the All Hands deck in time for the All Hands meeting.
87. Although the errors were minor, they were repeated and had the effect of undermining his confidence in her ability to support him administratively so that he could carry out his executive function effectively. It reached the point where his EA, who was supposed to lighten his workload, was in fact increasing it. In particular, the Second Respondent had to step in to deal with the All Hands at the last minute and he was frustrated that the Claimant had not given any prior warning that she was running late. We find that this was the last straw for the Second Respondent.
88. We find that the email sent by the Second Respondent to the Claimant after the dismissal meeting to confirm the dismissal was simply confirmatory of the content of the meeting.
89. We find that the conclusion that the Claimant was not the right fit for the role was not connected with the possible side effects or withdrawal symptoms of the claimant coming off her medication, which, in any event, the Second Respondent was not aware of. The reason for the dismissal was the way the Claimant had been performing her role.
90. We note that, even on the Claimant's own case, there is nothing to suggest that her coming off her medication was impacting her work. She has given other explanations for all the performance concerns raised by the Respondents and has not linked these to her depression or the effects of coming off the medication.
91. The Claimant claims in her Disability Impact Statement that she could not comprehend instructions or understand written material from April 2021 onwards. However, there is no evidence of this and she attended work and, as pointed out by her representative, mostly performed her role well, subject to the errors outlined above. She never gave this explanation to the Second Respondent in relation to the errors, generally apologising or giving other reasons for the mistakes. She also states in her Impact Statement that she dozed off during work but there is no evidence that she ever did this or that this was the reason for any of her errors.

Harassment – S.26 of the Equality Act 2010

92. We find that, on 2 June 2021, the Second Respondent ignored the Claimant's Slack message that notified him of her intention to speak to him about her worsening mental health. By that point he had decided to terminate her employment and that is what he dealt with at the meeting.
93. We find that the Second Respondent stated that a number of team members including himself have had mental health issues and they somehow figure them out, but we find that this was not said on 2 June 2021.
94. We find that, on 2nd June 2021, the Second Respondent informed the Claimant that her role as Executive Assistant was to be dependable and if she dropped

something, 30 plus people could be affected. It is clear from his evidence before the tribunal that this is what the Second Respondent thought. It is likely that he mentioned this when discussing the minor errors made by the Claimant which potentially had a big impact on the company, such as rescheduling a meeting with a major investor without checking with the Second Respondent.

95. We do not find that, on 2nd June 2021, the Second Respondent showed very little concern for the Claimant and the Claimant was not given an opportunity to ask anything in response to the Second Respondent dismissing her.
96. We find that, on 2nd June 2021, the First/Second Respondent sent the Claimant an email confirming the termination of her employment and confirming the Second Respondent's view that the Claimant was not a good fit for the role.
97. We find that, on 2nd July 2021, the Second Respondent's response to the letter of claim raised various issues with the Claimant's performance which had not been raised with the Claimant during her employment. Although these had not been raised with the Claimant as performance concerns in terms, the Claimant was aware of them and had apologised for many of them or provided explanations.
98. We therefore find that the following amounted to unwanted conduct:
 - 98.1. ignoring the Slack message;
 - 98.2. saying that the role of EA had to be dependable;
 - 98.3. the email telling the Claimant she was not a good fit for the role.
99. We do not find that that conduct related to the Claimant's disability. The unwanted conduct related to the decision to terminate the Claimant's employment. We are satisfied that the Second Respondent had reached this decision before receiving the Claimant's Slack message and that this message did not have any further bearing on his decision.
100. We have found that this decision was not based on the Claimant's disability but on the unsatisfactory working relationship between the Second Respondent and the Claimant. He had lost confidence in her ability to perform the EA role in a way which supported him to carry out his role.
101. In any event, we do not find that the conduct is sufficient to amount to harassment under the Equality Act 2010. We find that the conduct did not have the purpose of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating and offensive environment for her. We accept that the Claimant felt humiliated by being dismissed but in all the circumstances of the case it is not reasonable for the conduct to have that effect on the Claimant.
102. We do not find that the Second Respondent acted in any way that was humiliating to the Claimant. Having decided to terminate her employment, he did so in a measured way and used neutral language of 'not being a good fit' rather than being directly critical of her performance.

103. In conclusion, for the reasons set out above, we find that the Claimant's claims of direct disability discrimination, discrimination arising from disability and harassment on grounds of disability fail and are hereby dismissed.

Employment Judge Davidson
Date 28 February 2023

JUDGMENT SENT TO THE PARTIES ON

14/03/2023

FOR EMPLOYMENT TRIBUNALS

Notes

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