EMPLOYMENT TRIBUNALS

Claimant:	Mr F Amisculesei
Respondent:	DHL Services Ltd
Heard at:	Leeds Employment Tribunal
Before:	Employment Judge Deeley, Mr M Brewer and Mrs J Hiser
On:	21, 22, 23 and 24 March 2023
Representation:	
Claimant:	Mr A Clavane (lay representative)
Respondent:	Mr L Bronze (Counsel)
Interpreters:	Day 1 – Mrs Calniciuc Days 2 and 3 – Mrs Serban Day 4 – Mr Marcau

RESERVED JUDGMENT

1. The claimant's disability discrimination complaints of:
   1.1 Failure to make reasonable adjustments under s21 of the Equality Act 2010;
   1.2 Indirect disability discrimination under s19 of the Equality Act 2010; and
   1.3 Discrimination arising from disability under s15 of the Equality Act 2010;

   fail and are dismissed.

REASONS

INTRODUCTION

Tribunal proceedings

1. This claim was case managed during preliminary hearings:
   1.1 8 September 2022 – Employment Judge Shepherd; and
   1.2 1 December 2022 – Employment Judge Cox.
2. We considered the following evidence during the hearing:
   2.1 a joint file of documents and the additional documents referred to below;
   2.2 witness statements and oral evidence from:
      2.2.1 the claimant;
      2.2.2 the claimant's witnesses:

Name	Role at the relevant time (if applicable)
1) Mr Marian Amisculesei	Claimant's brother
2) Mr Ionut Amisculesei	Claimant's brother and warehouse operative for the respondent
3) Ms Petronela Scripa	Claimant's sister-in-law and warehouse operative for the respondent
4) Mr Christian Tanasuca	Warehouse operative for the respondent

      2.2.3 the respondent's witnesses:

Name	Role at the relevant time
5) Miss L Little	HR
6) Mr Remus Rusciuc	First Line Manager (and claimant's line manager)
7) Mr Ibrahim Kamisu	First Line Manager (and claimant's line manager)
8) Mr J Lambert	Shift Manager (and dismissing manager)

3. The claimant, Mr Tanasuca and Ms Scripa were assisted by the interpreters during the hearing.
4. The claimant and the respondent provided additional disclosure documents during the hearing. Neither objected to the inclusion of these documents in the hearing file.
5. We also considered the helpful oral and written submissions made by both representatives.

Adjustments

6. We asked both parties if they wished us to consider any adjustments to these proceedings and they confirmed that no such adjustments were required. We reminded both parties that they could request additional breaks at any time if needed.

Claimant's application to strike out the response

7. The claimant applied on the first day of the hearing to strike out the respondent's response. The claimant's representative stated that he was making an application because the respondent had not provided three documents that he had requested on 27 February 2023, around three weeks prior to the start of this hearing. The Tribunal discussed the documents requested with the parties and noted that:

    7.1 the claimant had made an earlier application for specific disclosure of other information which Employment Judge Lancaster had refused on 24 February 2023;

    7.2 the respondent had already provided one of the documents requested by the claimant and a copy had been included in the hearing file (details of health and safety related disciplinary action);

    7.3 the claimant had requested the respondent's 'reasonable adjustments policy' but no such policy existed and the respondent had already disclosed its diversity policy;

    7.4 the claimant also requested an anonymised record of all disabled warehouse operative's at the Thorne site who had reasonable adjustments in place and a description of those adjustments – no such document existed and in effect the claimant was requesting further information from the respondent;

    7.5 the respondent refused to provide information regarding other individuals' disabilities and reasonable adjustments because to do so would have involved other individuals' sensitive personal information from which they could have been identified, given the numbers involved at the site;

    7.6 the claimant had not requested an order from the Tribunal for disclosure of such information; and

    7.7 it was not clear what relevance information about other employees' disabilities and reasonable adjustments would have to the claimant's claim. The claimant's complaints of failure to make reasonable adjustments and indirect discrimination related to specific adjustments that he stated should have been made to his duties in relation to his disability.

8. The Tribunal concluded that:

    8.1 the respondent's conduct was not 'unreasonable' as alleged by the claimant within the meaning of Rule 37 of the Employment Tribunal Rules of Procedure; and

8.2 it was still possible to have a fair hearing of the claimant's claim on the basis of the detailed witness statements and documents included in the hearing file.

9. The Tribunal therefore rejected the claimant's application to strike out the response.

CLAIMS AND ISSUES

10. Employment Judge Cox summarised the claimant's factual complaints in the Annex to her Preliminary Hearing Summary on 1 December 2022. We discussed the issues (or questions) that the claim raised in detail at the start of the hearing and the Tribunal provided an agreed updated list of issues to both parties which is set out below.

Failure to Make Reasonable Adjustments – s.21 Equality Act 2010

The respondent concedes that the claimant's left shoulder deformity amounted to a disability and that they had knowledge of such disability at the relevant times.

1. Did the Respondent apply the following alleged provisions, criteria or practices (PCPs)?

(a) The practice of requiring warehouse operatives to lift loads weighing 10 kilos or more.

(b) The practice of requiring warehouse operatives to meet the following targets:

i) unloading between 1,500 and 2,000 loads from trucks in each 3 to 3.5 hour period.

ii) picking 40 products an hour, whilst using a scan gun.

2. Did the PCP(s) put the Claimant at a substantial disadvantage in comparison with persons who are not disabled? In particular, was the Claimant:

(a) In relation to the lifting of 10kg or more, persons with the Claimant's disability are more likely to:

i) Suffer from pain in their deformed shoulder (at paragraphs 1 and 2 of the Claimant's statement of case contained in the Annex of the CMO dated 01.12.2022, the Claimant states that "*he was experiencing pain in his shoulder when he unloaded trucks*" and "*he was in pain with his shoulder and the tasks he was being asked to do were beyond his physical strength and were causing him pain*").

ii) Take sickness absence because of the pain on 25 November 2021.

(b) In relation to the picking targets, persons with the Claimant's disability are more likely to:

i) Not meet their targets;

ii) Score lower in their probation reviews for not meeting their targets;

iii) Face an increased risk of failing their probation review as a result of not meeting their targets;

iv) Suffer from pain in their deformed shoulder;

v) Take sickness absence because of the pain;

vi) Face additional stress in trying to meet their targets whilst working with their disability.

3. Did the Respondent know, or could the Respondent be reasonably expected to know that the Claimant was likely to placed at a substantial disadvantage?

4. Would it have been reasonable for the Respondent to make the following adjustments:

(a) Exclude the requirement to lift loads weighing 10kg or more; and

(b) Reduce the Claimant's picking targets.

5. If so, did the Respondent fail to take such steps as it was reasonable to have to take to avoid the disadvantages, as identified at paragraph 6(a)-(b) above.

Indirect Disability Discrimination – s.19 Equality Act 2010

6. Does the Respondent operate the PCP(s) identified at paragraph 3 above?

7. If so, do the PCP(s) put persons with the Claimant's disability at a particular disadvantage when compared with persons without the Claimant's disability? The Claimant alleges the following disadvantages identified at paragraph 4 above.

8. If so, did the PCPs put the Claimant at that disadvantage?

9. If so, can the Respondent show the PCPs to be a proportionate means of achieving a legitimate aim? the Respondent contends that the alleged PCPs were a proportionate means of achieving the following legitimate aims:

(a) the business meets its contractual obligations and service provisions for its clients;

(b) to ensure workplace efficiencies and that production continues; and

(c) to effectively manage and supervise its workforce.

Discrimination arising from disability – s.15 Equality Act 2010

The respondent accepts that the claimant's dismissal amounted to unfavourable treatment.

10. Did the following things arise in consequence of the claimant's disability:
    a. the claimant failed to report the incident at work on 11 November 2021 (which he states was not an accident) to the respondent's managers. He states that he failed to do so because of a breakdown in his relationship with his managers (which he states was because they failed to make adjustments to his duties).

11. Did the respondent dismiss the claimant because of his failure to report his accident at work?

12. If so, is the Respondent able to show that the treatment was a proportionate means of achieving a legitimate aim? The Respondent relies on the following as legitimate aims:

a) Running an efficient service;

b) Managing employee performance;

c) Following the probationary review policy;

d) Maintaining appropriate standards of behaviour and conduct;

e) Enforcing health and safety policies; and

f) Ensuring the health and safety of all those working at the site.

Remedy

13. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
14. What financial losses has the discrimination caused the claimant?
15. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
16. If not, for what period of loss should the claimant be compensated?
17. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
18. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
19. Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
20. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
21. Did the respondent or the claimant unreasonably fail to comply with it?
22. If so is it just and equitable to increase or decrease any award payable to the claimant?

23. By what proportion, up to 25%?
24. Should interest be awarded? How much?

FINDINGS OF FACT

Context

11. This case is heavily dependent on evidence based on people's recollection of events that happened some time ago. In assessing the evidence relating to this claim, we have borne in mind the guidance given in the case of *Gestmin SGPS -v- Credit Suisse (UK) Ltd* [2013] EWHC 3560. In that case, the court noted that a century of psychological research has demonstrated that human memories are fallible. Memories are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe our memories to be more faithful than they are. External information can intrude into a witness' memory as can their own thoughts and beliefs. This means that people can sometimes recall things as memories which did not actually happen at all.
12. The process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to the parties. It was said in the *Gestmin* case:

    "Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

13. We wish to make it clear that simply because we do not accept one or other witness' version of events in relation to a particular issue does not mean that we consider that witness to be dishonest or that they lack integrity.

Background

14. The respondent's warehouse at Thorne (the "**Site**") provided logistics services to a single client, the Range. The claimant started working as a warehouse operative at the Site on 12 May 2021. He was originally supplied to the Site as an agency worker by the 24/7 agency.
15. The claimant was born with a deformity in his left shoulder. He has also had surgery on his left shoulder, which has left him with scarring. The respondent accepted that this was a disability for the purposes of s6 of the Equality Act 2010.
16. The claimant applied for a permanent role with the respondent in an application form dated 15 July 2022. He was interviewed for the role and started his permanent employment with the respondent with effect from 29 August 2021.
17. The claimant's offer letter stated:

Job Title: Warehouse Operative

You will be expected to carry out the duties associated with your role and any other duties which the Company may reasonably require you to perform from time to time. Due to the changing nature of the business, your duties may vary and develop. The Company reserves the right to ask you to perform other duties that may fall outside your normal role responsibilities but which are considered reasonable and within your capabilities.

18. The claimant worked around 40 hours per week on rotating shifts which normally consisted of:

    18.1 Week 1 - 6am to 2pm; and

    18.2 Week 2 – 2pm to 10pm.

19. The claimant's team (i.e. his colleagues, the First Line Managers and the Shift Manager) worked the same shift pattern as the claimant.

20. The claimant's offer letter also stated:

    4.0 PROBATIONARY PERIOD

    For external appointees only, the first 13 weeks of your employment shall be a probationary period. We may, at our discretion, extend this period. During this probationary period your performance and suitability for continued employment will be monitored.

    …

    11.0 TERMINATION OF EMPLOYMENT & NOTICE PERIOD

    …

    Notice within your probationary period will be as per statutory guidelines, however your employment may be terminated at any time immediately and without notice or payment in lieu of notice in the event of a serious breach of your obligations as an employee or if you cease to be entitled to work in the United Kingdom.

21. The respondent's staff included:

Name	**Role at the relevant time**
1) Miss L Little	HR
2) Mr Remus Rusciuc	First Line Manager (and claimant's line manager)
3) Mr Ibrahim Kamisu	First Line Manager (and claimant's line manager)
4) Mr Jake Lambert	Shift Manager (and dismissing manager)
5) Mr Ionut Amisculesei	Claimant's brother and warehouse operative for the respondent
6) Ms Petronela Scripa	Claimant's sister-in-law and warehouse operative for the respondent

7) Mr Christian Tanasuca	Warehouse operative for the respondent

Claimant's induction – 12 May 2021

22. The 24/7 agency and the respondent arranged an induction for the claimant on 12 May 2021. During the induction, the claimant signed the respondent's health and safety policy which stated:

    All colleagues

    …

    - *Report all accidents/incidents, dangerous occurrences/near misses and cases of occupational ill health to the management team.*

    …

    Failure to adhere to health, safety and welfare arrangements made by DHL Supply Chain may result in disciplinary procedures.

23. The claimant also completed the respondent's training entitled "Safe System of Work" ("**SSOW**"). This included training on:

    23.1 Manual handling;

    23.2 Health and safety responsibilities;

    23.3 Accident/incident reporting; and

    23.4 the respondent's "12 Safety First Rules".

24. The SSOW document included at row 4:

    "ALL accidents, incidents and near misses should be reported to a member of management immediately no matter how small. The scene should be preserved and nothing moved to ensure that an accurate account of the cause can be determined to ensure that similar events do not happen again.

    FAILURE TO REPORT ANY INCIDENT COULD RESULT IN IMMEDIATE REMOVAL FROM SITE

    BY NOT REPORTING EVENTS THAT OCCUR YOU COULD BE PLACING YOURSELF AND OTHERS IN HARMS WAY." [sic]

25. Part 4 of the training documents was headed 'Training validation and sign off'. The claimant correctly answered the question: *"At what time must you report an incident/accident or near miss?"* with the answer *"ASAP".*

Claimant's work in the goods in team – 12 May 2021 onwards

26. The claimant was initially worked in the goods-in team, which involved unloading products that arrived at the warehouse. At that time, the claimant was an agency worker. However, his day to day work was managed by Mr Rusciuc.

27. Mr Ionut Amisculesei (the claimant's brother) and Ms Scripa (the claimant's sister-in-law) had both worked for the respondent for some time before the claimant started working for the respondent on 12 May 2021. The respondent had previously made adjustments to Ms Scripa's duties because she suffered from neck pain.

28. Ms Scripa approached Mr Rusciuc and informed him of the claimant's disability. Mr Rusciuc did not recall the contents of their conversation, however he did accept that the conversation took place and that Ms Scripa informed him that the claimant could not lift heavy items. We accept Ms Scripa's evidence that:

    28.1 she told Mr Rusciuc's office that the claimant *"has a disability and cannot do the work"*;

    28.2 she then told Mr Rusciuc that the claimant had been "born with one arm shorter than the other" which meant he couldn't lift things that were very heavy. In particular, he could not lift items requiring two people to lift e.g. part of furniture;

    28.3 she asked if the claimant could do less lifting and could instead be allocated to another task within goods-in for most of the time; and

    28.4 she did not discuss the claimant's disability in detail or state any other adjustments that he may need.

29. Mr Rusciuc arranged for the claimant to be trained on scanning and booking in stock when the products arrived at the goods-in department. However, Mr Rusciuc did not notify any other managers or the respondent's HR team of the claimant's disability. He said that this was because the claimant would inform other managers that he worked with if there were any problems.

30. Mr Rusciuc stated that the claimant remained on scanning and booking in stock for the rest of the time that he managed the claimant and that the claimant was not required to unload goods. The claimant states that he only worked for around two weeks on scanning and booking in stock before he was required to unload goods again. Ms Scripa also stated that the claimant was not left for long on that post of booker. She said that he was asked to unload trucks, pick up and build pallets.

31. The claimant also stated that Mr Rusciuc told the claimant to load heavy boxes on to trucks in good-out department at the end of September 2021. The claimant stated that he told Mr Rusciuc that he felt 'humiliated' and wanted to go home because he was unable to perform tasks involving heavy lifting and manual loading. The claimant states that Mr Rusciuc asked why the claimant did not mention his disability when he was hired and the claimant replied that he had mentioned it.

32. We note in terms of the timeline of events that:

    32.1 Ms Scripa had already made Mr Rusciuc aware of the claimant's disability in mid-May 2021 and the claimant accepts that he was trained on booking and scanning as a result;

    32.2 the claimant had been undergoing training for his truck licence and successfully achieved this on 9 June 2021;

32.3 the claimant moved out of Mr Rusciuc's goods-in team to the MHE team of drivers in early June 2021. The claimant remained in the MHE team throughout the remainder of his employment and only worked in other areas (such as picking or goods in or out) when managers in those areas needed additional support;

32.4 the claimant states that in June 2021 he was notified by Mr Kamisu that Gabriel Arion (another manager who was covering goods-in) needed assistance with unloading that day. However, we have concluded that this conversation could not have taken place in June 2021 because Mr Kamisu;

32.5 Mr Kamisu took over management of the MHE team when he was promoted to the role of manager in July 2021. He managed the claimant for the remainder of the time that the claimant worked for the respondent;

32.6 the claimant was performing well in his role and was encouraged by his managers to apply for a permanent role with the respondent, which he did on 15 July 2021.

33. We have concluded that:

33.1 Mr Rusciuc did not ask the claimant to carry out any unloading tasks after his conversation with Ms Scripa in mid-May 2021, Mr Rusciuc arranged for the claimant to be trained on scanning and booking in stock and the claimant accepts that he carried out these tasks for two weeks. By the end of those two weeks, the claimant had nearly achieved his truck licence and moved to the MHE department shortly afterwards;

33.2 Mr Rusciuc did not have a conversation with the claimant at the end of September 2021, during which the claimant referred to being 'humiliated' or wanting to go home. The claimant was not managed by Mr Rusciuc at that time. In addition, Mr Rusciuc was already aware of the claimant's disability because Ms Scripa had told him and had adjusted the claimant's duties for the remainder of May and early June 2021. Mr Rusciuc would therefore not have asked the claimant "why didn't you say when you got hired" (as alleged by the claimant), given the discussions that had taken place already; and

33.3 other goods-in managers who were covering for Mr Rusciuc, including Mr Arion, may have asked Mr Kamisu to provide drivers to assist with unloading from time to time. None of the other goods-in managers were aware of the claimant's disability.

Claimant's application for a permanent role with the respondent

34. The claimant's application form dated 15 July 2021 provided some limited information regarding his disability in response to the respondent's standard questions.

34.1 in response to a question as to whether the candidate had a disability, the claimant stated that he had a disability but stated that he did not need any aids or adaptations;

34.2 in response to a question about adjustments for the interview for the role, the claimant ticked the box to say he had a disability;

34.3 In response to a request: *"please indicate which of the following apply, so that any special requirements can be accommodated at interview stage",* the claimant ticked the box state *"Co-ordination, dexterity, mobility."*

35. The claimant's first language is Romanian and he was assisted by an interpreter during this hearing. The Tribunal accepts the claimant's evidence during cross-examination that he thought the reference to 'aids or adaptations' in the application form meant changes to the respondent's equipment, such as its trucks or scanning guns.

36. The claimant was interviewed for the role by Mr James Neary (Quality Manager). The claimant did not provide any evidence in his written witness statement or in oral evidence about the interview discussions. We understand that Mr Neary has since left the respondent's business.

Claimant's probationary reviews

37. The respondent offered the claimant the role and he became directly employed by the respondent from 29 August 2021. The first 13 weeks of his role were a probationary period. Mr Kamisu carried out three probationary reviews with the claimant during this time. We do not have dates for all of the reviews, however we note that the last review took place some time after 27 November 2021 (because it refers to the claimant's sickness absence on 25 November 2021) and his dismissal on 2 December 2021.

38. Mr Kamisu regarded the claimant as a good worker. He stated the claimant was fairly quiet at work and just got on with the job. The claimant's performance at work was reflected in his strong probationary review scores which included the scores set out in the table below. The available scores were as follows:

38.1 1 – "Far exceeds – Outstanding performer";

38.2 2 – "Exceeds – Very Strong performer";

38.3 3 – "Fully Meets – Consistently good performer";

38.4 4 – "Partially Meets – Has minor deficiencies (coachable)"; and

38.5 5 – "Does Not Meet – Does not fulfil the performance requirements".

39. The scores for each of the first, second and third reviews are set out in the order given in the table below.

Understanding of key duties and responsibilities relevant to the role 3 3 1
Adherence to standard operating procedures 2 3 1
Quality and accuracy of work 2 3 3
Achievement of required productivity levels 2 2 2
Attendance record 3 3 1
Adherence absence reporting process N/A N/A 2
Disciplinary record 3 3 3
Understanding of site rules relating to safety and security 2 2 1
Adherence to site rules relating to safety and security 2 2 1
Safe operation of equipment 2 3 3
Maintains positive attitude to work 2 2 2
Willing to accept additional/varied tasks as required 2 2 2
Communicates effectively with managers and colleagues 2 3 1

40. The claimant scored '2' or 'Exceeds – Very Strong performer" at each review under the criteria 'achievement of required productivity levels'.

41. The claimant's scores between his second review (which took place around a month before his absence on 25 November 2021) and his third review (which took place between 27 November 2021 and his dismissal) showed that he had improved his performance in many areas.

42. Mr Kamisu also commented on each review as set out below:

    42.1 **1st review –** the claimant *"has had no absences, adhered to all Health and Safety on site followed all SSOW's and training. He need to hit his target and also remove wraps when putting stock in pick face. He also needs to achieve his targets when picking and focus in cons when pallet building. he also need to obey the site rules by keeping his mask on."*

    42.2 2nd review – the claimant **"***has had no absences, adhered to all Health and Safety on site followed all SSOW's and training. He needs to pay more attention when manual handling his MHE picking pallets up".*

    42.3 **3rd review –** the claimant "*needs to make sure he follows always site rules, his training, SSOW and adhere to Health and safety rules on site, Florin has failed to report an alleged injury at work this was highlighted in a routine RTW* [return to work meeting]*. he claim allegedly it happen two weeks ago*".

Claimant's difficulties during employment

43. The claimant has complained about three things that he says were provisions, criteria or practices that put him at a substantial disadvantage:

    43.1 lifting loads of 10 kilos or more;

    43.2 unloading 1,500 – 2,000 loads from trucks in a 3-3.5 hour period; and

    43.3 picking a minimum of 40 products per hour, whilst using the scan gun.

Lifting loads of 10 kilos or more

44. We concluded that there was no requirement on the claimant to lift a load of 10 kilos or more without assistance. The key reasons for our conclusion are:

    44.1 the claimant accepted in his witness statement that he sought help with lifting heavy items. He stated: *"I wasted time struggling to get [heavy boxes] on the pallet or when I was waiting for a colleague to pass by to ask him to help me".* We concluded that the claimant did not always ask for help from colleagues with heavy items because he did not want to waste any time; and

    44.2 Mr Tanasuca agreed and stated in his oral evidence that if there were large or heavy items that needed to be picked, then any operative could ask for help from their colleagues *"every time it is needed"* during a shift. Mr Tanasuca said that operatives either asked the first person who passed by their aisle or the person working in the next aisle.

Targets

45. The respondent's witnesses gave evidence that there were no individual targets for any member of staff, save in relation to the 'tote pick' (referred to below). They stated that:

    45.1 the respondent operated under customer targets for the whole of the Site, which were based on the Range's requirements;

    45.2 the work rate that they envisaged that operatives would be able to meet varied from department to department and from task to task. For example, picking small items such as books or stationery (known as the 'tote pick') was much quicker than lifting heavy items of furniture (such as sofas or gazebos);

    45.3 the work rate in the goods-in department would depend on the size of the containers, the number of items in each container and whether they were sorted into pallets or not. For example, a container with pallets of the same item would be much quick to unload and put away than a container with hundreds of loose items. In addition, managers would call head office and explain why it might take longer to unload a container with hundreds of loose items or large heavy items, than a container with fewer and/or lighter items that were packaged together;

45.4 in addition, the Range's product lines and the volume of product lines changed frequently, depending on the season and other events. For example, around the time of the Queen's funeral, the Range's product line changed significantly. By way of contrast, some of the respondent's other warehouses worked with more fixed product lines and targets could be set for certain picking areas; and

45.5 there were no disciplinary sanctions for people who did not meet the work rate that managers expected. Managers monitored the amount of downtime that operatives took between tasks by looking at the information provided by their scan guns (which were used by the operative to scan each item that they handled). If an individual took excessive amounts of downtime between handling items, then they would be placed on a Performance Improvement Plan and additional training would be considered.

46. We also note that:

46.1 Mr Kamisu noted in the claimant's first probationary review that the claimant had not met his targets. However, he still gave the claimant a rating of 2 – Exceeds/Very Strong Performer for the claimant's productivity levels;

46.2 Mr Kamisu also commented that the claimant worked more quickly than other members of staff, for example when tote picking;

46.3 the claimant was never threatened with any disciplinary action or capability proceedings due to not meeting targets. In addition, the claimant was not placed on a Performance Improvement Plan;

46.4 the respondent's bonus scheme for Autumn 2021 was not linked to any individual productivity targets. Instead, the scheme terms stated that an individual needed to have less than three occasions of absence during the scheme period. They also stated that an individual needed to remain employed throughout the bonus period in order to be eligible for a bonus. The warehouse operatives were aware of the scheme terms. For example, Ms Scripa texted the claimant to say that if he was absent on sick leave, he would not receive a bonus.

47. We accept the respondent's evidence that there were no set picking targets or unloading targets, contrary to the provisions criteria or practices alleged by the claimant.

48. We accept that the respondent expected operatives working on the tote pick to achieve a picking rate of 40 products per hour. However, we concluded that the claimant did not have any difficulty in meeting that pick rate because the items on the tote pick were small and weighed significantly less than 10 kilograms.

Discussions during November 2021

49. We have already set out our findings on the claimant and Ms Scripa's discussions with Mr Rusciuc regarding the claimant's disability earlier in this judgment.

50. The claimant stated that he told Mr Kamisu about his disability during conversations in November 2021. The claimant stated that:

    50.1 on one occasion, Mr Kamisu called him into the office whilst Mr Razvan Petrar was present. The claimant states that they both told him he had not met his targets on some days and would therefore not receive a bonus at the end of 2021;

    50.2 on another occasion in November 2021, Mr Kamisu nominated the claimant to assist the goods out department. The claimant says that he asked Mr Kamisu: "Why do you always make me do hard jobs when you know I have a disability" and that Mr Kamisu said that he needed "proof from the doctor".

51. However, we accepted Mr Kamisu's evidence that these conversations did not take place:

    51.1 we have already found that the Autumn 2021 bonus scheme did not require individuals to meet any productivity targets. The only targets were around absence and remaining in employment for the scheme period. In addition, Mr Petrar was not a manager and would not be in a position to tell the claimant whether or not he was eligible for a bonus;

    51.2 the claimant's text messages with Ms Scripa in late November 2021 refer to 'proof' from the claimant's GP. However, this related to a sick note covering the claimant's absence on 25 November 2021, rather than any earlier information about adjustments required for the claimant's day to day duties;

    51.3 Mr Ionut Amisculesei worked as an 'emergency relief' driver for Mr Kamisu's team, but did not mention the claimant's disability to Mr Kamisu;

    51.4 Ms Scripa had told Mr Rusciuc of the claimant's disability, but did not tell Mr Kamisu.

52. We concluded that Mr Kamisu and the claimant may have had a general conversation in November 2021 about drivers being allocated to work in other areas and that Mr Kamisu may have mentioned that certain drivers have medical restrictions on where they can work. However, the claimant did not have any discussions with Mr Kamisu regarding his disability until after his absence on 25 November 2021.

Thursday 25 November 2021

53. The claimant stated that he was suffering from an aggravation of his existing shoulder pain on or around 25 November 2021, after lifting a heavy box two weeks

earlier. He exchanged text messages with Ms Scripa the day before and decided to go into work for the first hour to tell the respondent that he was going to the doctor. The claimant later went to the doctor with his brother and obtained a fit note from his GP which stated that:

53.1 the claimant was absent due to: *"left shoulder deformity from birth"*; and

53.2 that he may be fit for work with workplace adaptations to take account of: *"restricted range of movements in the left shoulder able to fully function with the right side so can perform tasks that this allows"*.

54. We accept the claimant's evidence that he did not report what happened on or around 11 November 2021 because:

54.1 as set out in his disability impact statement, the claimant regularly struggled with shoulder pain which affected his sleep; and

54.2 he viewed the pain as a problem that he had struggled with from birth, rather than as a direct result of a specific incident.

Return to work meeting and investigation meeting – Friday 26 November 2021

55. The claimant returned to work the next day at the start of his shift at 6am on Friday 26 November 2021. Mr Kamisu was on leave that day. Mr Arion (another manager) held a return to work meeting with the claimant shortly after the shift started. We note that Mr Arion's first language is also Romanian.

56. Mr Arion did not provide evidence at this hearing. We understand that this is because he has since left the respondent. We have seen copies of the notes of two meetings that took place between Mr Arion and the claimant, both of which were held on 26 November 2021.

57. During the return to work meeting, Mr Arion completed the respondent's standard return to work form on which he noted that:

57.1 the claimant had only taken sickness absence on 25 November 2021 since he started his employment with the respondent. The claimant's sickness absence percentage was 0.38% (which was far lower than the Site's average absence percentage of 3.4%). (We also note that the claimant would still have been eligible for the Autumn 2021 bonus which required employees to have been absent on fewer than 3 occasions during Autumn 2021);

57.2 he categorised the claimant's absence as 'general illness' rather than 'accident at work or 'other';

57.3 he quoted the comments from the claimant's fit note, which means he must have had sight of that note;

57.4 he ticked 'yes' to the questions that asked whether the claimant's illness was likely to recur;

57.5 Mr Arion also ticked 'yes' to the question of whether the claimant was fit to resume duties and 'no' to the question of whether the claimant required additional support on his return to work.

58. Mr Arion did not complete Section 6 of the form which was headed: *"Absence related to accident at work (only to be completed for absence due to accident at work"*. However, he did carry out what appears to have been an investigation meeting regarding the claimant's condition later on 26 November 2021 and noted the claimant's responses in that meeting in a separate document.

59. The claimant stated in his oral evidence that Mr Arion told him he could only answer 'yes or no' to certain questions because Mr Arion did not let him to expand his answers. However, we note that the claimant did give longer answer to certain questions. The claimant signed the notes. Their discussions included:

Mr Arion – "Did you had the pain before starting work?"

Claimant – "Yes I had the pain before my shift started and it's like that from 2 weeks ago"

Mr Arion – "Did you report to your manager at 6:00 that you are not feeling well?"

Claimant – "No, Because I was thinking that the pain will disappear"

Mr Arion – "Why did your pain started 2 weeks ago?"

Claimant – "Because I lifted a heavy box at work"

…

Mr Arion – "Did you ask for help with lifting if the box was [too] heavy?"

Claimant – "I didn't know how heavy it is, only after I lifted I notice, I didn't check weight"

…

Mr Arion – "What is the weight that you can [normally lift]?"

Claimant – "I don't know around 10kg"

…

Probationary meeting with Mr Lambert – Wednesday 1 and Thursday 2 December 2021

60. The respondent invited the claimant to a probationary review meeting with Mr Jake Lambert (Shift Manager) on 1 December 2021. The letter stated:

"The purpose of the Probationary Hearing is to discuss: -

That during a routine return to work on the 26th November 2021 you alleged that you were injured during work approximately 2 weeks prior to the RTW [return to work] *and that you failed to raise this with your immediate manager. This constitutes a breach of the site health and safety policy"*.

61. The letter offered the claimant the right to be accompanied to the meeting and warned the claimant that:

    "Please be aware that potential outcomes of the hearing may include termination of your employment on the grounds of unsuccessful completion of your probationary period or an extension to your probationary period".

62. The claimant and Mr Lambert had not previously worked together. Mr Lambert worked as part of a different shift team to the claimant.

63. Mr Ionut Amisculesei (the claimant's brother who also worked for the respondent) attended the meeting with the claimant, both as his representative and in order to help with any translation required.

64. Before the meeting, Mr Lambert reviewed Mr Arion's completed return to work form for the claimant and his notes of discussions with the claimant.

65. Mr Lambert did not see a copy of the claimant's probationary review scores and comments completed by Mr Kamisu until these proceedings. In addition, Mr Lambert did not seek Mr Kamisu's feedback regarding the claimant's performance during the probationary review period. We note that the respondent's offer letter refers to a probationary period lasting 13 weeks. However, we concluded that claimant's general performance during his probationary period did not form part of Mr Lambert's decision.

66. Mr Lambert was aware from Mr Arion's notes and the discussions during the meeting on 1 December 2021 that the claimant had a lifelong shoulder condition which caused the claimant to suffer from intermittent pain. Their discussions included:

    66.1 Mr Lambert asked the claimant why he didn't report the incident. The claimant replied: *"Because it's a problem for me from a long time ago and I didn't' pay it much attention as it's something I've had for 35 years"*;

    66.2 the respondent's accident/incident/near miss reporting procedure, the claimant's training on this procedure and his understanding of the procedure.

67. The claimant did not mention any failure by the respondent's managers to make adjustments to his duties or to any breakdown in his relationships with his managers during the meeting.

68. Mr Lambert adjourned the meeting overnight. When the meeting started again on 1 December 2021, he informed the claimant that his probation period had been terminated because the claimant:

    "failed to report an alleged accident in which you stated you hurt your arm while carrying out a task at work this constitutes a breach of health and safety".

69. We concluded that the claimant and Mr Lambert were talking at cross purposes during this meeting:

    69.1 Mr Lambert thought that the claimant was saying that he had injured himself at work;

69.2 the claimant obtained a GP's note to evidence his existing shoulder condition. The claimant did not believe that the worsening of his shoulder pain was due to an accident/incident/near miss at work.

70. Mr Lambert confirmed his decision in an outcome letter dated the same day. This stated:

"My final decision in light of the information discussed and evidence is to dismiss you from company [sic] *due to a breach of health and safety which means we terminate your employment with the company due to unsuccessful completion of probationary period and your last date of employment was on 02/12/2021. You will be paid up to and including the aforesaid date as normal and you will be entitled to receive 1 weeks' notice pay, which will be paid to you as payment in lieu of notice with your final salary payment."*

71. The letter did not offer the claimant the right to appeal against his termination. The claimant did raise his concerns regarding the termination by email. Ms Little (HR) investigated the claimant's concerns but rejected them.

72. Mr Lambert did not refer specifically to the respondent's disciplinary policy during the meeting. However we note that the disciplinary policy states that breach of health safety policies could amount to gross misconduct.

73. The Tribunal asked Mr Ionut Amisculesei what was his understanding of the following concepts in the respondent's health and safety policy:

73.1 'accident' or 'near miss' – to which he replied: *"Anything that could cause an injury for someone"*;

73.2 'incident' - to which he replied: *"Anything that could cause a hazard for someone"*.

74. Mr Ionut Amisculesei also confirmed that he was aware of another employee who had received two final written warnings for health and safety related incidents. He stated that in relation to the claimant's situation:

"I was expecting a final written warning or something like that because there'd been a cast that one person had two final written warnings and he was still working."

75. We have also seen an anonymised list of the respondent's disciplinary action relating to health and safety at work incidents. We note that the list includes several dismissals for health and safety incidents.

76. We concluded that:

76.1 the respondent took potential health and safety incidents seriously, given the warehouse environment in which the respondent operated. This was confirmed by Mr Ionut Amisculesei and the respondent's managers' evidence;

76.2 we have seen evidence of other health and safety related dismissals in the respondent's anonymised table of disciplinary action;

76.3 Mr Lambert dismissed the claimant because he failed to report the incident on or around 11 November 2021 when he lifted a heavy box;

76.4 in our view, Mr Lambert was mistaken in concluding that the claimant's aggravated shoulder pain occurred as a result of an accident, incident or near miss. However, he did not dismiss the claimant for the reason stated by the claimant which was:

"a breakdown in his relationship with his managers (which he states was because they failed to make adjustments to his duties)."

76.5 We concluded that Mr Lambert did not have any knowledge of the claimant's relationship with his managers because he worked on a different shift to the claimant and the claimant did not mention this during the probation hearing. In any event, we concluded that:

76.5.1 Mr Rusciuc did make adjustments to the claimant's duties whilst he was working in the goods-in department. He did not tell any other managers about the claimant's disability;

76.5.2 neither the claimant nor Ms Scripa nor Mr Ionut Amisculesei raised any concerns with Mr Kamisu regarding the claimant's disability;

76.5.3 we accept Mr Kamisu's evidence that he had a good working relationship with the claimant and regarded him as a good worker. None of the claimant's witnesses suggested that there were any difficulties in the relationship between the claimant and Mr Kamisu. In addition, Mr Kamisu rated the claimant highly in his three probationary reviews;

76.5.4 we therefore rejected the claimant's assertion that his relationships with his managers had broken down.

RELEVANT LAW

77. The Tribunal has considered the legislation and caselaw referred to below, together with any additional legal principles referred to in the parties' helpful written submissions. We have not reproduced their submissions in this Judgment in the interests of brevity.

DISCRIMINATION ARISING FROM DISABILITY (S15 EQA)

78. The right not to suffer discrimination arising from disability is set out at s15 of the EQA:

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.

Something arising from disability

79. The EAT in *Sheikholeslami v University of Edinburgh* [2018] IRLR 1090 (paragraph 96) held that s15 requires the Tribunal to consider "two distinct causative issues" when considering whether the 'something' alleged arose in consequence of B's disability. The EAT set out the issues as follows:

> *"(i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B's disability?*
>
> *The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the 'something' was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence."*

Proportionate means of achieving a legitimate aim

80. The Tribunal must apply an objective test when considering whether there was a proportionate means of achieving a legitimate aim, having regard to the respondent's workplace practices and organisation needs (see, for example, the EAT's decision in *City of York Council v Grosset* (UKEAT/0015/16), as approved by the Court of Appeal ([2018] EWCA Civ 1105).

81. We note that the Tribunal must make its own assessment as to whether 'proportionate means' have been used to achieve a legitimate aim.

FAILURE TO MAKE REASONABLE ADJUSTMENTS (S20 AND 21 EQA)

82. The legislation relating to a claim for failure to make reasonable adjustments is set out at sections 20 and 21 of the EQA:

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

…

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

…

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

…

83. We also note that 'substantial' in the context of 'substantial disadvantage' is defined at s212(1) of the EQA as: *"more than minor or trivial"*.

84. The Tribunal must assess whether the Respondent applied a provision, criterion or practice which placed the Claimant at a substantial disadvantage in comparison to those employees not sharing his disability. If so, the duty to make reasonable adjustments is engaged.

85. The Tribunal must then consider whether a reasonable adjustment might have eliminated or reduced that disadvantage.

86. We note that the duty to consider making reasonable adjustments falls on the employer. There is no onus on a disabled person to suggest adjustments. However, the courts have held that a failure to 'consult' about reasonable adjustments is not in itself a failure to make reasonable adjustments. In *Tarbuck v Sainsbury Supermarkets Ltd* [2006] IRLR 644 EAT, Elias J held at paragraph 71: *"[t]he only question is, objectively, whether the employer has complied with his obligations or not"*. The EAT went on to state: *"whilst, as we have emphasised, it will always be good practice for the employer to consult …there is no separate and distinct duty of this kind"*.

87. The burden of proof is on the claimant to establish the existence of the provision, criterion or practice and to show that it placed them at a substantial disadvantage (*Project Management Institute v Latif* [2007] IRLR 579). The claimant must also identify the potential reasonable adjustments sufficiently to enable them to be considered as part of the evidence during the hearing. These are not limited to any adjustments that the claimant brought to the respondent's attention at the relevant time. The respondent must then show, on the balance of probabilities, that the adjustment could not reasonably have been achieved. It is not necessary, at the time, for the claimant to have brought the proposed adjustment to the respondent's attention.

88. The reasonableness of the steps to be taken to avoid the disadvantage is to be determined on an objective basis (*Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160). In order for an adjustment to be "reasonable", it does not

have to be shown that the success of the proposed step was guaranteed or certain. It is sufficient that there was a chance that it would be effective. Guidance as to the considerations that are relevant in assessing reasonableness is provided in paragraph 6.28 of the Employment Statutory Code of Practice.

89. The public policy behind the reasonable adjustments legislation is to enable employees to remain in employment, or to have access to employment. The Tribunal has to carry out an objective assessment to consider whether any proposed adjustment would avoid the 'substantial disadvantage' to the employee caused by the PCP (*Royal Bank of Scotland v Ashton* [2011] ICR 632).

90. In *Leeds Teaching Hospital NHS Trust v Foster* UKEAT/0552/10, the EAT held that if there is a real prospect of an adjustment removing a disabled employee's disadvantage, that would be sufficient to make the adjustment a reasonable one.

91. In addition, the Tribunal needs to consider the implications of any proposed adjustments on a respondent's wider operation (*Lincolnshire Police v Weaver* [2008] AER 291, decided under the former Disability Discrimination Act 1995).

INDIRECT DISCRIMINATION (S19 EQA)

92. The right not to suffer indirect discrimination is set out at s19 of the EQA.

19 Indirect discrimination

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

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

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

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

93. The burden of proof is set out at s136 of the EQA for all provisions of the EQA, as follows:

> **136 Burden of proof**
> …
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
> …

(6) A reference to the court includes a reference to -
(a) an employment tribunal;
…

94. The Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054 stated that it is important not to make too much of the role of the burden of proof provisions. Those provisions will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they are not required where the Tribunal is able to make positive findings on the evidence one way or the other.

95. The relationship between the four elements of an indirect discrimination claim and S.136 was considered by the EAT in *Dziedziak v Future Electronics Ltd* EAT 0271/11, a claim of indirect sex discrimination. The EAT stated: *'In this case the matters that would have to be established before there could be any reversal of the burden of proof would be, first, that there was a provision, criterion or practice, secondly, that it disadvantaged women generally, and thirdly, that what was a disadvantage to the general created a particular disadvantage to the individual who was claiming. Only then would the employer be required to justify the provision, criterion or practice, and in that sense the provision as to reversal of the burden of proof makes sense; that is, a burden is on the employer to provide both explanation and justification'.* This approach was confirmed by the Supreme Court in *Essop and ors v Home Office (UK Border Agency) and another* 2017 ICR 640, SC.

APPLICATION OF THE LAW TO THE FACTS

96. We applied the law to our findings of fact and reached the conclusions set out below.

REASONABLE ADJUSTMENTS AND INDIRECT DISCRIMINATION

97. The first question that the Tribunal had to consider for both the complaints of failure to make reasonable adjustments and indirect discrimination was whether the respondent applied the provisions, criteria or practices alleged by the claimant at paragraphs 1 of the updated list of issues (the "**PCPs**").

98. We concluded that the respondent did not operate the PCPs alleged by the claimant for the reasons set out below.

"1.(a) The practice of requiring warehouse operatives to lift loads weighing 10 kilos or more"

99. We concluded that there was no requirement for the claimant or any other warehouse operative to lift a load of 10 kilos or more without assistance. The key reasons for our conclusion are:

99.1 the claimant accepted in his witness statement that he sought help with lifting heavy items. He stated: *"I wasted time struggling to get [heavy*

boxes] on the pallet or when I was waiting for a colleague to pass by to ask him to help me";

99.2 Mr Tanasuca agreed and stated in his oral evidence that if there were large or heavy items that needed to be picked, then any operative could ask for help from their colleagues *"every time it is needed"* during a shift. Mr Tanasuca said that operatives either asked the first person who passed by their aisle or the person working in the next aisle.

100. We therefore concluded that the respondent did not operate a PCP of requiring warehouse operatives to lift loads weighing 10 kilos or more without assistance. We noted that the claimant may not have requested assistance from colleagues on certain occasions because he did not want to 'waste time'. However, this is different to being required to lift heavy items without assistance.

"1. (b) The practice of requiring operatives to meet the following targets:

(i) unloading between 1,500 and 2,000 loads form trucks in each 3 to 3.5 hour period;

(ii) picking 40 products an hour, whilst using a scan gun"

101. We accepted the respondent's evidence that there were no set picking targets or unloading targets, for the reasons set out in paragraphs 45 to 48 of this Judgment.

102. We accept that the respondent expected operatives working on the tote pick to achieve a picking rate of 40 products per hour. However, this was not a formal target – rather the respondent would consider why the pick rate was not met (including if any additional training was required under a PIP or otherwise).

103. The claimant's complaints of failure to make reasonable adjustments and of indirect disability discrimination therefore fail and are dismissed.

104. We therefore do not need to reach a conclusion on whether the claimant suffered the 'substantial disadvantage' alleged at paragraph 2 of the updated list of issues for the purposes of the reasonable adjustments complaint or the respondent's knowledge of such disadvantage or the reasonableness of any adjustments. However, we note that:

104.1 there was no suggestion in the probationary reviews conducted by Mr Kamisu that the claimant was likely to fail his probationary period because of any failure to meet targets or that he scored low because of this. The claimant achieved a rating of 2 (i.e. Exceeds – Very Strong performer) for productivity levels in each of his reviews. His overall scores reflected the fact that Mr Kamisu regarded him as a good worker, as set out at paragraphs 38 to 42 of this Judgment; and

104.2 in relation to the tote pick, we also concluded that the claimant did not have any difficulty in meeting that pick rate because the items on the tote pick were small and weighed significantly less than 10 kilograms. We accepted Mr Kamisu's evidence that the claimant was in fact faster at picking the tote pick items than other colleagues. The claimant did not suggest in his

evidence that he struggled with the tote pick in any way. His evidence was that he struggled with lifting heavy items and with unloading or loading heavy items. The claimant was therefore not placed at any 'substantial disadvantage' in relation to the tote pick rate.

105. We also note in relation to the indirect disability discrimination complaint that the claimant failed to provide any evidence at all that the PCPs alleged would put other people with the claimant's disability at a particular disadvantage when compared with persons without the claimant's disability. The claimant only provided evidence of the disadvantage that he states he suffered, rather than that suffered by others with his condition.

DISCRIMINATION ARISING FROM DISABILITY

106. The claimant's complaint of discrimination arising from disability related to the claimant's dismissal only, as set out in the updated list of issues.

107. The first question for the Tribunal to decide was whether the following things arose in consequence of the claimant's disability:

"10.(a) the claimant failed to report the incident at work on 11 November 2021 (which he states was not an accident) to the respondent's managers. He states that he failed to do so because of a breakdown in his relationship with his managers (which he states was because they failed to make adjustments to his duties)."

108. We concluded that:

108.1 the PCPs that the claimant stated the respondent applied in relation to his complaints of failure to make reasonable adjustments and indirect disability discrimination did not in fact apply, as set out in this section of the Judgment on Conclusions;

108.2 Mr Rusciuc did make adjustments to the claimant's duties whilst he was working in the goods-in department. He did not tell any other managers about the claimant's disability;

108.3 we accepted Mr Kamisu's evidence that he had a good working relationship with the claimant and regarded him as a good worker. None of the claimant's witnesses suggested that there were any difficulties in the relationship between the claimant and Mr Kamisu. In addition, Mr Kamisu rated the claimant highly in his three probationary reviews.

109. In addition, Mr Lambert had no knowledge of any alleged breakdown in relationships between the claimant and his managers or of any alleged failure to make reasonable adjustments for the claimant. Mr Lambert did not work with the claimant on a day to day basis because he was part of a different shift. The claimant did not raise any of these issues during the probation meeting.

110. The claimant's complaint of discrimination arising from disability therefore fails. Mr Lamber did dismiss the claimant because of his failure to report the incident on

11 November 2021. However, this was not connected with something arising from the claimant's disability.

CONCLUSIONS

111. The claimant's complaints of failure to make reasonable adjustments, indirect disability discrimination and discrimination arising from disability therefore fail and are dismissed.

Employment Judge Deeley
1 April 2023