# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms R Campbell**

**Respondent:** **(1) Honeywell Control Systems Ltd (2) Mr P Holden**

**Heard at:** Reading **On:** 26, 27, 28 April 2023

**Before:** Employment Judge Shastri-Hurst, Mr C Juden, Mr J Appleton

**Appearances**
For the claimant: Mr Martins (consultant)
For the respondent: Mr Griffith-Jones (solicitor)

**JUDGMENT** having been handed down to the parties on 28 April 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

1. The claimant was engaged by the first respondent, as a commercial assistant, from 19 August 2020 to 27 August 2021. She was appointed by Martin Arnison (UK Major Projects Director for the first respondent). Early conciliation against the second respondent, Mr Holden, started on 3 September 2021 and ended on 9 September 2021. Early conciliation against the first respondent started on 3 September 2021 and ended on 16 September 2021. The claim form was presented on 9 October 2021. The claim is therefore in time.

2. The first respondent provides technical and operational solutions such as fire safety systems and security systems in large construction projects.

3. Mr Holden is the UK Operations Leader for the first respondent. He was the individual who decided to terminate the claimant's contract.

4. The claim focuses on a short period of time, from around 27 July to 30 July 2021, and relates to events culminating in the claimant's dismissal, communicated to her on 30 July 2021.

5. The claimant was represented by Mr Martins, and both respondents were represented by Mr Griffith-Jones. We are grateful to both representatives for the manner in which they conducted this hearing.

6. In order to aid us in reaching our decision, we have had sight of a bundle of 293 pages, plus the index. On the first day, the claimant sought to add another document in relation to liability. The respondents did not object to the inclusion of this document, and it was entered at [48a]-[48c]. The claimant sought to rely on two further documents, however, as these relate to remedy, it was agreed that we could park the issue of their admission unless and until they became relevant.

7. The Tribunal heard evidence from the claimant and Mr Holden. We also heard evidence from Mr Arnison (the Project Director initially on the project to which the claimant was assigned) and Mr Walsh (a representative of the client of the project, AstraZeneca). We were assisted by oral submissions from both Mr Martins and Mr Griffith-Jones.

## The Complaints

8. The claimant is making the following complaints:

    8.1 Discrimination arising from disability – s15 Equality Act ("EqA");
    8.2 Failure to make reasonable adjustments – ss20/21 EqA
    8.3 Harassment in relation to disability – s26 EqA
    8.4 Victimisation – s27 EqA

## The Issues

9. In advance of the hearing, the Tribunal drew up a list of issues and shared it with the parties, giving them the opportunity to comment on it. Both representatives were content to agree that list, which is reproduced below.

10. We also note Employment Judge Lewis' case management order from 14 November 2022, in which it is recorded that the claimant's complaint in relation to s15, s26 and s27 EqA is that she was dismissed as a result of sending her email of 29 July 2021. Her claim under s20 EqA is that she was dismissed for not attending/not being able to attend meetings at 1600hrs.

11. In other words, the only treatment/conduct/detriment/disadvantage we were dealing with was the claimant's dismissal. This was clarified with the claimant and Mr Martins at several points during the hearing.

12. The Tribunal discussed with the parties the order in which to deal with the various issues in its deliberations. The Tribunal indicated that it would consider the issue of the respondents' knowledge (of the email of 29 July 2021, of disability, of substantial disadvantage and of the protected act) first. If it was found that the respondents did not have the requisite knowledge, it was agreed that this would mean the claims fail.

13. If it was found that the respondents did have the requisite knowledge required by any or all of the claims, then the second issue for the Tribunal to determine would be the reason for dismissal. If the reason for dismissal was neither the email of 29 July 2021, nor the claimant's refusal/inability to attend a meeting at 1600hrs, the Tribunal need go no further, and the claims would fail. Again, both parties agreed with this approach.

14. The issues were agreed to be as follows:

1. ***Disability***

*1.1. By judgment of 14 November 2022, Employment Judge Lewis found that the claimant, at all material times, had a disability as defined in s6 EqA. The claimant was disabled by way of anxiety and depression.*

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

*2.1. Did the respondents treat the claimant unfavourably by dismissing her on 30 July 2021?*

*2.2. Did the claimant's email of 29 July 2021 at 0607hrs arise in consequence of the claimant's disability?*

*2.3. Did the respondents dismiss the claimant because of that email?*

*2.4. Did the respondents know or could they reasonably have been expected to know that the claimant had the disability? From what date?*

3. ***Reasonable Adjustments (Equality Act 2010 sections 20 & 21)***

*3.1. Did the respondents know or could they reasonably have been expected to know that the claimant had the disability? From what date?*

*3.2. A "PCP" is a provision, criterion or practice. Did the respondents have the following PCP:*

*3.2.1. The requirement to attend meetings at times specified by the business, or to be dismissed?*

*3.3. Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the claimant could not comply with the time of the meeting, and so was dismissed?*

*3.4. Did the respondents know or could they reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?*

*3.5. What steps could have been taken to avoid the disadvantage? The claimant suggests:*

*3.5.1. Changing the times of the meetings; and/or*
*3.5.2. Exploring, with occupational health guidance if required, other methods of enabling the claimant to participate fully in her role within the business.*

*3.6. Was it reasonable for the respondents to have to take those steps?*

*3.7. Did the respondents fail to take those steps?*

4. ***Harassment related to disability (Equality Act 2010 section 26)***

*4.1. Did the respondents dismiss the claimant?*

*4.2. If so, was that unwanted conduct?*

*4.3. Did it relate to disability?*

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

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

5. ***Victimisation (Equality Act 2010 section 27)***

*5.1. Did the claimant do a protected act as follows:*

*5.1.1. The claimant relies on her email of 29 July 2021.*

*5.2. Did the respondents dismiss the claimant?*

*5.3. By doing so, did they subject the claimant to detriment?*

*5.4. If so, was it because the claimant did a protected act?*

## Law

### Knowledge of disability

15. In relation to claims under s15, guidance is obtained from the decision of HHJ Eady QC (as she then was) in **A Ltd v Z [2019] IRLR 952**, in which she summarised the authorities. The relevant points for the purposes of this case are as follows (at paragraph 23 of that judgment):

> "(1) ...
> (2) The Respondent need not have constructive knowledge of the complainant's diagnosis to satisfy the requirements of s 15(2); it is, however, for the employer to show that it was unreasonable for it to be expected to know that a person (a) suffered an

> impediment to his physical or mental health, or (b) that that impairment had a substantial and (c) long-term effect, see *Pnaiser v NHS England [2016] IRLR 170* at para 69 per Simler J.
> (3) The question of reasonableness is one of fact and evaluation, see *Donelien v Liberata UK Ltd [2018] EWCA Civ 129 CA* at para [27]; nonetheless, such assessments must be adequately and coherently reasoned and must take into account all relevant factors and not take into account those that are irrelevant.
> (4) ...
> (5) The approach adopted to answering the question thus posed by s 15(2) is to be informed by the Code, which (relevantly) provides as follows:
> "5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a 'disabled person'.
> 5.15 An employer 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. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.""

16. The Code of Practice at paragraph 6.19 provides an example of a scenario in which the employer may be required to take steps. Take the case of an employee who has depression and cries at times at work. It is likely that a reasonable employer would talk to the worker about whether their crying is connected to a disability, and also whether a reasonable adjustment could be of assistance. In **Gallop v Newport City Council [2013] EWCA Civ 1583**, the Court of Appeal highlighted that it is vital for a reasonable employer to consider whether an employee is disabled, and form their own judgment on this issue.

17. The burden of proof in terms of knowledge is on the employer to prove that it was unreasonable for them to have the required knowledge.

**Knowledge – s27 EqA victimisation**

18. It is well established that the respondent must have knowledge of the protected act for a claim of s27 to succeed – **South London Healthcare NHS Trust v Al–Rubeyi UKEAT/0269/09** (2 March 2010, unreported), **Thompson v Central London Bus Company [2016] IRLR 9, EAT.**

**Knowledge in relation to the index case**

19. Given the facts of this case, and the fact that the only detriment/disadvantage/treatment/conduct said to have befallen the claimant is her dismissal, it was agreed that it must be Mr Holden himself who needs to have the requisite knowledge for each section of the EqA, given that he was the dismissing officer. It has never been part of the claimant's case that Mr Holden was influenced by anyone else in his decision to dismiss the claimant, such as the scenario envisaged by **Royal Mail Group Ltd v Jhuti [2019] UKSC 55**.

20. In that case, Lord Wilson held at paragraph 42 that:

> "The need to discern a state of mind, such as here the reason for taking action, on the part of an inanimate person, namely a company, presents difficulties in many areas of law. They are difficulties of attribution: which human being is to be taken to have the state of mind which falls to be attributed to the company?' In that case the Supreme Court overturned the decision of the Court of Appeal and held that 'if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason."

21. Therefore, the knowledge required in this case is Mr Holden's personal knowledge of the email of 29 July 2021, otherwise it cannot have been the causal reason for the dismissal, as required by s15, s26 and s27. In terms of s20/21, it is necessary for Mr Holden to have had actual or constructive knowledge of the claimant's email, as it is this email that is said by the claimant to give him knowledge of her disability.

**Reason for dismissal**

22. As set out above, the only detriment/disadvantage/treatment/conduct relied upon is the act of terminating the claimant's contract on 30 July 2021. The causal link required is set out for each section of the EqA relied upon by the claimant:

**22.1** S15 – it is necessary for the claimant's email to have operated on Mr Holden's mind – **Pnaiser v NHS England [2016] IRLR 170**, at paragraph 31(b):

> The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

22.2 S20 – it is necessary for the claimant's dismissal to have been caused by her failure to comply with the PCP of attending meetings at times specified by the business.

22.3 S26 – the unwanted conduct (here, the dismissal), must be "related to" the protected characteristic (here, the claimant's disability). The test of "related to" is fairly broad. Some guidance was given in the case of **UNITE the Union v Nailard [2018] EWCA Civ 1203.** In that case, a failure to address a sexual harassment complaint was not in itself an act of unwanted conduct related to sex. That would be a step too far: it would be necessary to find that the failure to deal with the complaint was itself motivated by sex discrimination. The factual matrix of this case is that it is alleged that the claimant was dismissed for sending the email of 29 July 2021, which was in itself related to the claimant's disability.

22.4 S27 - in terms of the reason for any detriment, it is not necessary for the protected act to be the conscious motivation of the alleged perpetrator. In **Nagarajan v London Regional Transport [1999] IRLR 572** it was held that the requirement was that the protected act had a significant influence on the decision to dismiss.

## Findings of fact

23. The claimant was engaged as an agency worker, into the role of Commercial Assistant at the first respondent, from 19 August 2020 - [49]. Her contract at [48] states that her role was Commercial Assistant. The claimant says that she is a qualified Quantity Surveyor, whereas Mr Holden's view is that this is not the case. It is common ground that the claimant has a Higher National Diploma in Quantity Surveying, but not a degree. Mr Holden refers to the claimant as a "junior" quantity surveyor, compared to Paul Stubbs, a "senior" quantity surveyor. Mr Stubbs had a degree in quantity surveying. Mr Stubbs and Ikene Ezendoikwele (also referred to by the respondents as a Senior Quantity Surveyor) were also agency workers, although provided by a different agency from the claimant.

24. The claimant was brought on board in order to work on the AstraZeneca contract: a contract for the construction of a new facility for AstraZeneca on a site near Addenbrookes University Hospital in Cambridge. The electrical work for the project was assigned to two subcontractors: Logic Electrical Contractors Ltd ("Logic") and Marcoe Engineering Ltd ("Marcoe").

25. AstraZeneca had representatives on site and closely involved in the project, specifically the mechanical and electrical works; these individuals were William Kerr and Frank Walsh. Weekly meetings occurred between the first respondent, the subcontractors and Mr Kerr and Mr Walsh, to provide updates on the project, and also to ensure that budgets were being followed.

26. The claimant's hours were changed by agreement early into her engagement with the first respondent. Her hours were agreed to be 0600 – 1600 by Mr Arnison. This change was latterly discussed between the claimant and Mr Holden. The claimant mentioned to Mr Holden that the reason for the change was that she functioned best in the morning, and she needed to work more hours, in order to increase her remuneration. This was Mr Holden's evidence, and he was not challenged on this point.

27. The claimant reported to Mr Arnison until early June 2021. At that point, Mr Arnison was removed from the AstraZeneca project, and Mr Holden was given responsibility for the project. However, he (Mr Arnison) remained the claimant's contact at the first respondent until a suitable alternative employee of the respondent on the AstraZeneca project could be identified. Kerry McGloughlin was the person ultimately identified, and so the claimant then started to report to her in around June 2021. Despite this formal change, Mr Arnison still acted as a contact at the first respondent for the claimant.

**May 2021**

28. In May 2021, Mr Holden and the claimant had a conversation in which Mr Holden said that his partner, Vicky Christy, would be coming to join the project, and the claimant would be working with/for her. Ms Christy is a senior direct employee of the first respondent, who was, at this time, based on a project in London ("the London project").

29. There was a dispute in evidence between the claimant and Mr Holden regarding when this conversation took place, and what exactly was said. It is the claimant's case that a conversation occurred on many occasions, in which Mr Holden told her that she would be working with Ms Christy, and the other two QSs (Mr Stubbs and Mr Ezendiokwele) would be let go. Mr Holden's evidence was that there was a conversation in which he said that the claimant would be working with Ms Christy, but that was the extent of it. Mr Holden remembered the conversation taking place sometime in May 2021, whilst at a meeting in Bracknell.

30. We prefer the respondents' case on this point over the claimant's for the following reasons:

    30.1 The claimant in her witness statement puts no time or date on this conversation (see C/WS/9);
    30.2 The claimant's evidence to us was that this conversation happened on more than one occasion, but still was unable to give us any indication of dates;
    30.3 Mr Holden's evidence was specific, in that he was able to recall the circumstances in which the conversation took place.

31. We therefore prefer Mr Holden's evidence on this point, and find that Mr Holden, in May 2021 said that the claimant would be working with Ms Christy, but did not say that the other two QSs would be let go.

32. There was another relevant conversation that Mr Holden says happened in May 2021. This is the conversation in which Mr Holden asked the claimant to stay on the Project, and persuaded her to stay. Again, there is a dispute on this point. The claimant's case is that this conversation happened a few weeks before 30 July 2021. She told us that she remembers that it was a telephone call she had with Mr Holden as she was leaving the Holiday Inn: this was on the last occasion that she stayed at a hotel for her work with the first respondent. It is Mr Holden's case that this conversation did happen, but that it took place in May 2021.

33. We find that this conversation happened in May 2021, for the following reasons:

    33.1 There is no contradiction in fact between the two parties' evidence. "A few weeks" before 30 July 2021 could take us back to May 2021;
    33.2 In May 2021, there had been no indication from Logic that they would be leaving the Project, and so there was no reason for Mr Holden to think that the claimant's workload would decrease at this point. This is consistent

with Mr Holden's evidence that, in May 2021, he wanted the claimant to stay.

**June 2021**

34. Mr Arnison was alerted, some time around June 2021, that the claimant's contract was due to terminate on 18 July 2021 (by the latest extension, as seen at [48a]). Mr Arnison saw fit to indicate that he wanted to extend the claimant's likely end date by 12 months; he confirmed this in the email on 6 June 2021, at [70].

35. In the event, the claimant's likely end date was in fact only extended by 6 months, giving her a new likely end date of 19 December 2021 - [49]. This is because the first respondent has a policy whereby any agency worker's likely end date can only be extended by 6 months at a time. Those responsible for a project at the first respondent (such as Mr Arnison) may indicate that they intend to keep a contract worker for longer than 6 months, but the procedure is that contracts are reviewed and then likely end dates are extended in 6 month blocks. The purpose of this is to ensure that the first respondent maintains control of its workforce. There is an overall cap on the length of any agency worker's service with the first respondent, of 23 months, as seen in the policy at [41]-[43].

36. On 9 June 2021, one of the regular project meetings between the first respondent, the subcontractors, and AstraZeneca's representatives took place. The minutes are at [63]-[67]. Present at that meeting were Mr Holden (for the first respondent), Mr Walsh (for AstraZeneca), and Mr Partington (for Logic). In that meeting, it is recorded that Mr Partington "confirmed he would prefer to conclude the iBMS based on a lump sum with another contractor concluding the Fire and Security". In other words, it was communicated to Mr Holden and Mr Walsh in June 2021 that Logic would like to leave the AstraZeneca project. Logic in fact left the AstraZeneca project on 1 August 2021. The claimant submitted the final accounts for Logic on 28 July 2021 - [116].

37. In June 2021, the kitchen and restaurant part of the works at AstraZeneca was completed.

38. As mentioned above, some direct employees of the first respondent were involved in the London project. Mr Holden was aware that this was envisaged to come to an end some time in summer/autumn 2021. It was intended that the first respondent's employees working on the London project would then need to be relocated to the AstraZeneca project.

**July 2021**

39. On 19 July 2021, Mr Holden attended another AstraZeneca update meeting. Following this meeting, he sent an email on 22 July 2021, at [103], in which he said "Paul will direct workloads for Roxy [the claimant] and Ikenne until both mentioned are replaced by the HBS directly employed team". In other words, it was his intent that the claimant and Mr Ezendiokwele would both be replaced by the first respondent's direct employees. Mr Walsh remembers the meeting, and

being informed of this, but cannot give the precise date of this meeting, however he accepts that it would have been around the time of Mr Holden's email of 22 July 2021.

40. It was envisaged that the first respondent's direct employees would be coming on board the AstraZeneca project once the London project that they were working on was closed out, which was intended to be around August 2021. This took longer than expected, and there is some dispute as to when the direct employees (including Ms Christy) transferred from the London project to the AstraZeneca project. Mr Holden told us that they came on board in January 2022. Mr Walsh stated that it was 6-8 weeks later than intended, which would be around October 2021.

41. It is not necessary for us to make a finding on when exactly the direct employees started on the AstraZeneca project. It is common ground that they started later than intended, and therefore later than August 2021. For us, the relevant point is that, at the time of the claimant being given notice, it was still envisaged that the direct employees would be coming on board some time in August 2021.

**Claimant's workload June/July/August 2021**

42. At the height of her workload, the claimant was doing reconciliation exercises, working on the Logic contract, the kitchen/restaurant project and the catering facilities project. She also worked on the Marcoe contract too.

43. There is a dispute in evidence as to what, if any work the claimant did on the Marcoe contract. Mr Holden says that this was Mr Stubbs' responsibility. The claimant says that most of her time was taken up with Marcoe, and that she had to do a handover with Mr Stubbs prior to leaving on 27 August 2021.

44. We find that the claimant did do some work on the Marcoe contract, and did provide a handover to Mr Stubbs before her departure. However, the relevant point for us is the claimant's workload in general at the time the decision was taken to terminate her contract.

45. By the time summer 2021 was approaching the claimant's workload was reducing:

    45.1 The kitchen/restaurant project finished in June 2021;
    45.2 The Logic contract ended at the end of July 2021;
    45.3 The catering facilities work concluded around June 2021;
    45.4 The reconciliation exercises had decreased in volume.

46. Therefore, at the end of July 2021, the only work that the claimant had was work she was doing on the Marcoe contract, and the diminishing work on the reconciliation exercises.

47. It was agreed with AstraZeneca and the first respondent (via Mr Holden) that there would be a reduction in headcount in the AstraZeneca team, given that from August 2021 there would only be one subcontractor instead of two.

48. Mr Holden's evidence was that, for one subcontractor, only one QS was required. We accept this evidence; it makes commercial sense and is consistent with the evidence we have seen in the bundle at [103]. We also accept Mr Walsh's (unchallenged) evidence that, on reconfiguring the Marcoe contract in light of Logic's departure, the project needed to be and was in fact streamlined to make it more efficient.

49. Mr Holden determined that Mr Stubbs would be the appropriate person to stay on as quantity surveyor, although ultimately it was not ruled out that Mr Stubbs might also leave, when the direct employees of the first respondent were in a position to return - [103]. Mr Holden determined that Mr Stubbs should be the QS to stay, as Mr Holden's view was that Mr Stubbs was more senior to the claimant due to the disparity in their qualifications. The claimant argues that she had been engaged for longer, and so should have been the one QS to stay.

50. We accept Mr Holden's reason for deciding to keep Mr Stubbs as the one QS, over the claimant. Objectively, a degree is a higher qualification than a Higher National Diploma, and we accept Mr Holden's evidence that it was on this disparity in qualification that he based his decision.

**27 July email exchanges**

51. A Microsoft Teams meeting was booked by Mr Williams for 27 July 2021. An invitation was sent to various parties, including the claimant, by Mr Williams on 29 June 2021. The invitation was copied to Mr Holden - [107]. The meeting was timed to be 1600-1700.

52. On 27 July 2021, the claimant did not attend that pre-booked meeting; neither did the other intended participants, Mr Stubbs and Mr Ezendiokwele. Mr Williams sent an email at 1608hrs, requiring that all three be "on the call tomorrow" - [107].

53. At 1615hrs, the claimant sent an email to Mr Holden, asking him to tell Mr Williams that her finishing time was 1600hrs - [106].

54. At 1708hrs, Mr Holden confirmed that he had done as the claimant had requested.

**28 July email exchanges**

55. At 1440hrs on 28 July 2021, Mr Holden sent an email to Mr Williams, copying in the claimant, Mr Stubbs and Mr Ezendiokwele, asking Mr Williams to cancel the 1600hrs meeting. He also asked "Scott" to set up a meeting for 1500hrs every other day.

56. At 1450hrs, Mr Williams replied to Mr Holden's email, copying in the claimant and others, questioning why the time needed to be changed to suit the claimant, and stating that he thought site hours were 0700-1700 "unless she has taken a cut in hours".

57. It was this email from Mr Williams that triggered the claimant's email the following day.

58. Mr Holden's evidence was that he spoke to Mr Williams on the telephone at some point around this time, and explained that the claimant's hours were 0600-1600hrs. Mr Williams' response was that an earlier meeting did not suit his working day, to which Mr Holden responded that it was his (Mr Holden's) project, not Mr Williams', and that the claimant's hours had been agreed. We accept this evidence: it is consistent with the contemporaneous evidence, and in any event was not challenged.

**29 July 2021 email**

59. The claimant sent an email at 0607hrs on 29 July 2021 to Mr Williams, copying in Mr Holden, which reads - [138]:

> I suffer with depression and anxiety. The last few weeks this had been triggered by my long working hours and it affects my performance when I don't rest. I log on early, as this is when I am at my peak and work my best. Working beyond 4pm upsets my schedule in terms of my medication, my counselling sessions and my resting periods. Since I have worked here, I have worked weekends, 7 day weeks and 80 hour weeks and my mental health cannot cope as it is reaching breaking point. I believe I made this point perfectly clear to my agency prior to taking on the position. What I ask is your support to assist me to carry out my duties. I have not taken "a cut in hours", I work 6am-4pm and I am happy with this.

60. This email is relied upon as being the protected act for the purposes of the victimisation claim (it is accepted by the respondents that this is a protected act).

61. It is also common ground that this email is the first time the claimant notified the first respondent, and second respondent, that she had anxiety and depression.

62. From the documents we have in the bundle, there appears to have been no response from either Mr Williams or Mr Holden to this email at any stage. We find this disappointing, given that the claimant remained at work for a month after this email was sent.

**Termination on 30 July 2021**

63. Mr Holden spoke to the claimant on 30 July 2021 for the purpose of telling her that her contract was to be terminated as of 27 August 2021. This was followed up by an email to the claimant from Mr Holden on the same date - [155].

64. The claimant worked her notice period, her last day being 27 August 2021.

**Mr Holden's knowledge of the email of 29 July 2021**

65. At around the time of summer 2021, Mr Holden was in receipt of 200-250 emails a day, given that he was in charge of all the first respondent's projects in the UK and Nordics. As such, he set up a rule on his emails, whereby any email that he

was copied into would go to a separate file. He would then check this file once or twice a week. He assumed that, if he was only copied into it, then the email must not require any action on his part, meaning that he did not have to read it instantly.

66. Mr Martins, on behalf of the claimant, seeks to shed doubt on this evidence from Mr Holden, relying on emails in which it appears that Mr Holden has replied to an email he was copied into fairly promptly. Mr Martins specifically took Mr Holden to the following:

    66.1 27 July 2021, Mr Williams's email at 1608 hrs, and Mr Holden's email on 28 July 2021 at 1440hrs - [107/108]; and
    66.2 28 July 2021, the claimant's email at 1358hrs, and Mr Holden's email on the same date at 1438 - [117].

67. Mr Holden's response to this suggestion was that it may just have happened to be that the afternoon of 28 July 2021 was when he chose to check his "copied inbox". He noted the close proximity of his responses being within 2 minutes of each other, responding to emails that were sent a day apart.

68. We accept that Mr Holden set up the rule to send emails into which he was copied to a separate file. We note on [175] that the file is named "cc messages". That evidence of a screenshot on [175] showing Mr Holden's inbox, is from September 2021, and is contemporaneous evidence that he had set up such a rule.

69. We turn to the question of fact, as to whether Mr Holden read the claimant's email of 29 July 2021 prior to giving her notice of termination on 30 July 2021. We find that he did not read the email before 30 July 2021, for the following reasons:

    69.1 The only evidence on this point comes from Mr Holden himself, which is that he did not read the email before communicating to the claimant the termination of her contract;
    69.2 Although Mr Martins sought to cast doubt on this, we have looked closely at the emails to which he refers, and they are consistent with Mr Holden having checked his cc messages file at around 1430 on 28 July 2021, and replying to various messages around that time. Those emails are consistent with Mr Holden's evidence that he checked the file periodically, and do not undermine his evidence that he did not read the claimant's email before terminating her contract;
    69.3 We find that, having checked his cc messages file in the afternoon of 28 July 2021, it is credible that Mr Holden did not check them again within 48 hours (i.e. by the time he terminated the claimant's contract);
    69.4 Mr Martins has also argued that Mr Holden should have read the email, and questioned whether Mr Williams telephoned Mr Holden to discuss the email before 30 July 2021. This again is not evidence, but assertion or supposition. The question at this stage is not whether Mr Holden should have read the email, but whether in fact he did. Further, we have no

evidence of a conversation taking place between Mr Williams and Mr Holden, and any conversation is denied by Mr Holden.

## CONCLUSIONS

### Discrimination arising from disability

70. The claimant's case on this point is that her contract was terminated because she sent the email of 29 July 2021.

71. As already established, the decision maker was Mr Holden. In order for him to have terminated her contract on the basis of the email (i.e. for it to have operated on his mind), it is evidently necessary that he read that email before communicating termination to the claimant on 30 July 2021.

72. We have found that Mr Holden had not read the email prior to his conversation with the claimant, terminating her contract.

73. Therefore, this claim must fail.

### Harassment

74. As recorded in EJ Lewis' order of 14 November 2022, the claimant's case under s26 is the same as under s15. In other words, the claimant again says that she was dismissed for sending the email on 29 July 2021.

75. This again must require Mr Holden to have read the email in advance of terminating the claimant's contract. We have found that this is not the case.

76. Therefore this claim must fail.

### Victimisation

77. S27 requires that the protected act (the email) was a significant influence on Mr Holden's decision to terminate the claimant's contract.

78. It is well established that this requires the decision-maker to have been aware of the protected act. In other words, Mr Holden must have read the email in order to have been significantly influenced by it. We have found that he did not read the email, and therefore did not have knowledge of the protected act.

79. Therefore this claim must fail.

80. In relation to these three claims, we will however go on to consider the reason for dismissal in any event.

### Reason for dismissal

81. In considering the timeline of events leading to the claimant's dismissal:

81.1 In June 2021, Logic informed Mr Holden that it wanted to leave the contract, and it was agreed that Logic would do so. This meant only one QS would be required, and the client (AstraZeneca) expected there to be a streamlining in resources. We have already accepted Mr Holden's reasoning for why he decided to keep Mr Stubbs over the claimant;
81.2 By 22 July 2021, Mr Holden had communicated to Mr Walsh his intent to terminate both the claimant and Mr Ezendiokwele's contracts;
81.3 In June/July it was envisaged that the direct employees of the first respondent would be transferring from the London project to the AstraZeneca project in late August 2021.

82. Mr Martins casts doubt on the reason for dismissal, asserting that the respondents' purported reason for dismissal is at odds with it extending her likely end date in June 2021. On this point, we accept that it was Mr Arnison's decision to extend the claimant's likely end date to December 2021. We also accept Mr Arnison's evidence that he was unaware of the changes within the AstraZeneca project: that Logic was leaving and the projects that the claimant was working on were winding up. There is no good evidence to undermine Mr Arnison's evidence, which we found credible and consistent with his statement and the documents in the bundle. We note also that he was not, at the time of extending the claimant's likely end date, the Project Director on the project any longer.

83. We make the point that it is less than helpful to have someone (Mr Arnison) making decisions on agency contracts when he does not have a clear picture of the project and its needs at the time of making that decision. It appears that, from the time Mr Holden took over as Project Director in June 2021, Mr Arnison almost had one foot in and one foot out. It would have been more helpful either for Mr Arnison to have been fully apprised of the situation within the project when making decisions on extensions, or for Mr Holden to be the one determining whether extensions were necessary. We find what appears to be a lack of communication between Mr Arnison and Mr Holden on the requirements of the project perplexing.

84. However, this does not alter our finding that Mr Arnison was the one who decided to extend the claimant's contract, and that this decision was taken in good faith.

85. We therefore accept that the decision to terminate the claimant's contract had in fact already been made, before the claimant sent her email of 29 July 2021. Therefore the reason for her dismissal was not that email.

86. This means that the claimant's claims under ss15, 26 and 27 would have failed at this stage in any event.

**Reasonable adjustments**

<u>Knowledge of disability</u>

87. As we have found that Mr Holden did not have sight of the email of 29 July 2021 prior to giving the claimant notice on 30 July 2021, we find that Mr Holden did not have actual knowledge of the claimant's disability.

88. We turn to consider whether he ought reasonably to have known that the claimant was disabled at the point of giving her notice.

89. We find that, given the 29 July 2021 email was sent directly to Mr Williams, and in light of the importance of the information within that email, Mr Williams should have read it straight away. He also should have spoken to Mr Holden (as Project Director who had responsibility for agency workers) straight away, and before the conversation on 30 July in which the claimant was given notice.

90. The question then becomes whether, from the information within the email, Mr Holden ought reasonably to have known that the claimant was disabled for the purposes of the EqA.

91. I have already read out the email: we are not satisfied that there is sufficient information in there to convey that the claimant was in fact disabled. However, we consider that this email should have set the first respondent on a path to make further investigations with the claimant in order to satisfy itself as to whether she was disabled.

92. We find that such investigations would not reasonably have taken place and concluded in the time between the claimant's email and the conversation in which she was given notice.

93. In other words, we are satisfied that it was unreasonable to expect either respondent to have known that the claimant was disabled at the point of the conversation in which she was given notice.

94. Therefore, neither respondent had the requisite knowledge of the claimant's disability for the purposes of s20/21.

95. Her reasonable adjustments claim therefore fails.

96. We do however put on record our disappointment that, despite the claimant remaining engaged for a further month from 30 July 2021, nothing appears to have been done to respond to her email. Nothing was done to address her anxiety and depression, and nothing was done to provide her with any support in relation to her conditions. Even though all parties knew that the claimant would be leaving on 27 August 2021, we would still have expected some form of support to have been received by her in the intervening weeks.

97. We will however go on to consider the reason for dismissal in any event.

<u>Reason for dismissal</u>

98. The claimant's claim here is that she was dismissed because she could not (and did not) attend meetings at 1600hrs. This relates to the meeting on 27 July 2021, and the email correspondence from that date, as I have recorded above.

99. We have set out the reason for her termination as we find it to be above. We do not accept that the reason for her dismissal was her failure to attend meetings at 1600, or her indication that she was unable to do so.

100. We come back to the identity of the decision maker being Mr Holden, and look at the contemporaneous evidence of Mr Holden's conduct at the end of July 2021:

    100.1 He was supportive of the claimant's position that she should not be expected to work past 1600hrs;
    100.2 He acted on the claimant's request for him to speak to Mr Williams about this point promptly - [106];
    100.3 He had a conversation with Mr Williams in which he stood up for the claimant, making the point that her hours had been agreed, and she was not required to work beyond them. This evidence of the conversation he had with Mr Williams was not (and could not reasonably have been) challenged;
    100.4 He also sent the email at [108] to Mr Williams, again supporting her and requiring future meetings to be at 1500hrs in order to accommodate the claimant's agreed hours.

101. We also note that it was not put to Mr Holden that his decision to dismiss was based on the claimant's inability to attend meetings at 1600hrs.

102. We accept that Mr Williams' showed some hostility towards the claimant regarding her requirement to attend earlier meetings. However, it has never been the claimant's case, and was not put to Mr Holden, that Mr Williams in any way influenced Mr Holden's decision, such as would need to be the case for a **Jhuti** scenario to arise.

103. We therefore find that the reasonable adjustments claim fails, as the claimant was not dismissed for her inability or failure to attend meetings at 1600hrs.

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Employment Judge Shastri-Hurst

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Date 9 May 2023

REASONS SENT TO THE PARTIES ON

4 June 2023

FOR THE TRIBUNAL OFFICE: GDJ