



EMPLOYMENT TRIBUNALS

Claimant

Ms I R Geafar

Heard at Bury St Edmunds (by CVP)

Before: Employment Judge Manley
Members: Mr S Holford
Mr C Davie

Appearances

For the Claimant: In person
For the Respondent: Ms Gray, counsel

Respondent

The Secretary of State for Justice

On: 17, 18 and 19 July 2023

JUDGMENT

1. There will be no strike out of the claimant because of the claimant's failure to provide a witness statement. We took the view that a fair trial is still possible and we proceeded.
2. The claimant was not treated unfavourably because of something arising in consequence of her disability.
3. There was no failure to make a reasonable adjustment.
4. There was no harassment related to disability.
5. The claimant's claims for disability discrimination therefore fail and are dismissed.

REASONS

Introduction and issues

1. This was a matter where there had been several preliminary hearings including one where there it was determined that the claimant was a disabled person for reasons relating to her anxiety and reactive depression but not for another condition relied upon.
2. The issues were agreed at one of those preliminary hearings. They appear at page 86 of the bundle and will be answered in our conclusions which we come to later.

3. In summary, this was a claim for disability discrimination. There was one allegation of discrimination arising from a disability under s.15 of the Equality Act 2010 (EQA) which related to things said at a meeting on either 25 or 26 April 2021. Another allegation was that there had been a failure to make a reasonable adjustment under sections 20 and 21 EQA related to shortness of notice of changes in work. The claimant confirmed that was a reference to the change in her work team. Other allegations were said to be harassment under s.26 EQA all related to a meeting on 15 June 2021.
4. It was agreed that there were no issues of time limits to bring the claim and the respondent acknowledged that they had knowledge of disability relating to anxiety and reactive depression.

The hearing

5. We received an electronic bundle of the documents for the hearing and witness statements for the five respondent's witnesses. They were:
 - Emma Page, the claimant's Line Manager.
 - Linda Carmen-Rigden, Business Manager and Ms Page's Line Manager.
 - Julie Forder, Business Manager, that is the same level as Ms Carmen-Rigden who dealt with the grievance at an informal stage.
 - Katie Morgan, former Director of Interventions who dealt with the grievance at the final appeal stage, and
 - Luke Jenkinson, Head of Service Centres and who was present at the meeting on 15 June.
6. The claimant had not sent a witness statement which she had been ordered to do. This emerged, as far as the tribunal were concerned, on the morning of the hearing, although the respondent's representatives were aware of it towards the end of the week preceding this hearing. The respondent therefore applied for a strike out of the claimant's claim on the basis of failure to comply with a tribunal order. There was a written application and we heard oral argument from the respondent's representative and from the claimant.
7. Having considered the matter, the tribunal decided that it should and could proceed as all witnesses were present. We understood that we had all relevant documents in the bundle and we felt that we could hear the claimant's evidence based on the existing material, primarily that contained in the claim form and in the list of issues. We did not strike out the claims as we found that a fair trial was still possible.
8. We heard evidence from the claimant based on what was in the claim form which appears at pages 24 and 29 of the bundle, and the employment judge asked some limited questions relating to the list of issues which had been previously discussed and agreed at preliminary hearings.

9. The claimant was then cross examined by Ms Gray and was given an opportunity to add anything at the end of her evidence.
10. There were some adjustments which needed to be made because of symptoms the claimant was experiencing. In particular, the claimant asked for several breaks. These were entirely reasonable requests and were agreed to. The claimant also made a request that she did not wish to hear the voices of three of the five respondent's witnesses because she was concerned about her mental health. She was advised that she could switch off her microphone so that she did not hear them but she was also informed that the tribunal would be hearing that evidence and would be taking it into account. In any event, two of those witnesses gave no extra evidence beyond that contained in their witness statements. Mr Jenkinson gave limited extra evidence and the employment judge asked him questions similar to those the claimant had asked of the two witnesses that she did ask questions of, particularly relating to training and policies.
11. The hearing therefore proceeded on Day 2 and was concluded on the second day. The tribunal began its deliberations that day and continued on the morning of the third day and oral judgment was then given.

Facts

12. The relevant facts are largely not in dispute. We have only found those facts which are relevant to the issues which we need to determine.
13. On 9 September 2019 the claimant commenced employment with Management and Training Corporation Ltd. To put it as briefly as we can, that organisation carried out work of the Probation Service which had been contracted out but was later brought back into the Ministry of Justice. She worked as a Service Centre Administrator. The tribunal understands there were various teams carrying out various administrative tasks. There was a relatively common line management system with there being a team leader who was the claimant's immediate line manager, then business managers line managing them and HR support.
14. We heard evidence of the training that employees and managers received about equal opportunities, diversity and so on. The claimant asked Ms Forder whether she believed she had had sufficient training and she answered she had and she gave details of that saying that she had unconscious bias training, that there was a mental health ally system and a disability passport system. The employment judge asked Mr Jenkinson about training and he mentioned online training on disabilities, referenced multiple policies and HR support to managers as well as guidance being provided on the making of reasonable adjustments.
15. On 16 April 2020, the claimant having had some sickness absence, there was an Occupational Health report. This appears at pages 118 to 119 of the bundle. The claimant confirmed that was written in her claim form (below) was a reference to this report. This part of the claim form appears at page 24 and in box 8.2 and it says this:

"In my Occupational Health report it was specified that I need a few days/weeks' notice to adapt to significant changes at work.

16. We therefore looked at that report carefully. What that report says is as follows:

"Ms Geafar explained that her cat practices excessive licking if there is any routine change. Having previously owned such a cat myself I can advise this behaviour leads to hair loss and skin problems usually requiring frequent and expensive veterinary treatment. I would therefore recommend that if there is a requirement to start work later a gradual introduction to a change of hours may be of assistance."

17. That Occupational Health Report also suggested a stress risk assessment.
18. The claimant was cross examined on the report. She accepted that it did not deal with the question of a change in work teams but rather working hours which had happened earlier (and which, it is noted, was an adjustment for the claimant's benefit).
19. The claimant raised a grievance in September 2020 and that was dealt with by Andy Scott and it was not upheld. There were a number of issues that the claimant raised there including bullying and harassment, as well as matters relating to IT issues and Occupational Health referral.
20. The claimant commenced a period of sickness absence in November 2020 and there was therefore a further Occupational Health report in January. This made a number of recommendations, the respondent having asked whether some could be made. The adjustments which were suggested to be considered appear at page 151 and were,
- *"adaptions to the external door of the building to allow disabled access;*
 - *ensuring that her desk in the office is not in the area of high traffic and that she is able to see the door,*
 - *look at the potential for adapting light levels/accommodations for glare*
 - *ensuring that the Excel worksheets are working effectively and that is subject to repeated failings.*
 - *A further stress assessment undertaken by HR, and,*
 - *the formulation of an action plan after the stress assessment to try to address the perceived stressors".*
21. We have heard that the majority of these adjustments were put in place as far as it was possible to do so. The claimant raised no issues about this.

22. On 8 February 2021 the claimant raised a further grievance, again referring to bullying, infringement of rights and breach of contract. Later that month, on 25 February, Ms Page emailed her setting out arrangements for her return to work and covering all the arrangements that had been put in place to allow her to do so.
23. The stress risk assessment was completed on 10 March 2021. On 11 and 12 March, there were two meetings with Ms Forder to discuss the claimant's grievance. There are relatively long meeting notes in the bundle between pages 182 and 191 covering what was said there. One of the matters which was discussed was the possibility of a team move.
24. On 23 March Ms Forder sent a letter to the claimant covering the matters that they had discussed and giving her outcome. In that letter, at page 209, Ms Forder says this:

“During our conversation on 11 March 2020 [which should be 2021] we discussed the potential benefits of moving to a new team. You suggested a move to Paula Lowe’s team as this is a leader you have a lot of respect and trust for however you were concerned the work would not be as stretching or as challenging as you enjoy. After some consideration you felt that you would prefer to stay in your current team. I would strongly encourage yourself and the business to consider if a move to another team would provide you with the opportunity for a fresh start.”

25. The claimant having received that outcome requested, on the same day, that a formal grievance process be undertaken and she returned from sickness absence on 31 March 2021.
26. In April 2021 she passed her probationary period and she met with Lucy Satchell-Day to discuss her grievance and there was an outcome on 1 May. The grievance was not upheld. Again, there is a recommendation that consideration was given for the claimant to move to new line management.
27. On 14 May, the claimant met with Katie Morgan because she had appealed the outcome of the formal grievance.
28. On 25 May, Emma Page had sent the claimant an email mentioning a number of expectations for her return. On cross examination, the claimant made it clear that there was one matter in that email which caused her concern although that was not made entirely clear to Linda Carmen-Rigden to whom she then complained. The matter which the claimant said in the hearing concerned her in that email reads as follows as this is page 306:

“Pending the OH referral and access to work assessment for working adjustments, Roxy should wear a face covering when walking around the office if she is unable to adhere to Covid 19 one way system which is in place for health and safety.”

29. The claimant's evidence with respect to this is that she felt the fact that Ms Page said *“If she is unable”* is in some way challenging her disability. The

tribunal do not accept there was any such challenge but it is simply an explanation of what should happen if the claimant cannot comply with a one-way system. There is no challenge to the claimant's disability there.

30. In any event, because the claimant had complained to Ms Carmen-Rigden about the email, she then met with Ms Carmen-Rigden and Ms Forder to discuss that email. This seems to have been a relatively informal meeting and there was no note although both those individuals have given evidence about the meeting. The list of issues suggests there was mention of the claimant's "tardiness" but the claimant accepts that that word might not have been used. It is clear to the tribunal that there was a discussion about the claimant's timekeeping. This was partly based on Ms Carmen-Rigden's own observations of some timekeeping issues. The claimant explained in cross examination that she was concerned because Ms Carmen-Rigden did not ask whether her issues with lateness related to her disability but rather asked questions about whether it related to the respondent's treatment of her. That seems to be accurate. There was a discussion about timekeeping and there may have been a reference to whether the claimant thought the reason related to management's actions.
31. In any event, on the same day, Ms Morgan had written to the claimant with the outcome of the appeal of the grievance. She upheld the original outcome and also upheld the recommendation that the claimant be moved to a different team. This is contained in a letter of the same date and it is worth reading some of the final page of that letter, because it gives a clear picture of what the decision was at that point. Ms Morgan said this at page 301:

"It was great to hear that you love your job. You spoke very eloquently and about wanting to build your confidence and demonstrate your professional skills. Like you this is our goal and we must work together to do this. When I spoke to Head of Service and your Line Manager they were both of the same view and want to support you to undertake your role effectively."

She then went on

"Given this, I agree with the formal grievance resolution that you should be moved to a new manager/team. I believe this offers the best opportunity for a fresh start enabling clear support and expectations to be put in place to enable you to rebuild your confidence and demonstrate your competence fully."

And continued:

"Whilst we are within our rights to assign you to any NSC activity (as job description are the same) given our intent to support you to manage your anxiety I am recommending that a shortlist of options is drawn up and your views considered before a decision is made by the Head of Service. Where possible they should consider if elements of Programmes work could feasibly be undertaken from within different teams with a new manager and/or whether other

options (such as Contact Centre CP) better suit your current needs (specifically relating to new management difficulties typing and the need to minimise anxiety). I expect you to be given the opportunity to indicate which shortlisted option best meets your needs.”

She concluded on this topic:

“As such I am upholding the recommendation in formal grievance to move you to a new manager/team with added requirements

- Head of Service to draw up a shortlist of options for alternative team/role activity for you to comment on in terms of suitability within two weeks***
- Head of Service to consider options for team/activity and make a decision, communicating this clearly to you***
- As above, new line manager to ensure there is a full workplan in place and shared with you for comment for the next two months to cover relevant training and delivery expectations.”***

32. The tribunal is satisfied that that letter informed the claimant of a very clear decision that she was to be moved to a new team but that she was to be provided with options for her to comment on. It was a decision that was taken at that point, at the very latest, but not to which team she would be allocated.

33. Therefore, Mr Jenkinson, whose job this was as Head of Service, met with the claimant on 10 June 2021 to discuss various options. The note which he provided at pages 308 and 309 in the bundle explained in some detail the various jobs that he was suggesting could be suitable for the claimant and the reasons for him putting them forward. At page 309, after he had done that, he notes this:

“I asked what team you felt would be a good move to and you said you would not be moving teams. You stated that we cannot force you to move teams and that you are not willing to.”

34. Mr Jenkinson’s letter to the claimant summarises that he went on to remind the claimant that it was a recommendation from the grievance and that he was seeking her views about which team. He believed that the way the claimant behaved in that meeting was confrontational and it is not surprising that he thinks that given what the note records. The claimant does not accept that she behaved in a confrontational manner. In any event, the claimant replied to Mr Jenkinson on 14 June suggesting that she could share some printing duties until technology is installed and that she should stay in the team she was in with the current managers.

35. On 15 June 2021 there was therefore a further meeting between the claimant and Mr Jenkinson. The claimant was told that he had made a

decision to move her to Paula Lowe's team and that it would be effective the following day. The claimant became unwell. It appears that she had symptoms which are associated with a panic attack, and Mr Jenkinson phoned the ambulance and called for the First Aider who was Ms Forder who joined the meeting. Ms Forder later made a note of what she witnessed during the course of that incident and that is at page 310 to 311 of the bundle.

36. For the most part there is not a great deal of dispute about what happened during the time the claimant was waiting for medical help from the ambulance. She suggests that she said something to the effect of "*leave me alone*" which she believes she said to Mr Jenkinson and that she intended him to leave the room. He denies that she said any such thing although it is clear from at least one part of the notes that she did tell Mr Jenkinson to shut up. It is possible that she said something to the effect of leave me alone. It was a fairly lengthy incident as there was a little over an hour between the incident beginning and the ambulance attending, so it is possible during the course of that that the claimant may have said "*leave me alone*" but Mr Jenkinson did not take that to mean that he should leave the room and certainly Ms Forder never heard anything to that effect. His view, which was a reasonable view, was that he should stay with an employee who was unwell until medical help appeared.
37. One thing which is noted as having occurred during the course of that incident which is relevant to the list of issues is that Ms Forder notes (p311):

"RH said she was ok with the move, she just needed two weeks' notice to help her adjust to the changes. I said if we had to explain her case to someone they would ask why we hadn't tried a move of teams and would also ask why wait and build anxiety and you could see the need to do this now. I also reminded her that in the last three grievances heard each lead had recommended a move to a new team. RG, [the claimant], said this was never agreed though."
38. The list of issues appears to suggest that it was Mr Jenkinson who made some reference to the decision being made with what the claimant believed was short notice. In any event, the tribunal accepts that those comments were made along with the other ones which, in large part, are agreed which is that both Mr Jenkinson and Ms Forder tried to reassure the claimant that what they were doing was trying to support her through this difficult time and that the recommendation had been made some time ago and that it would be maintained. After some time the ambulance arrived; those attending said that the claimant was ok but took her home.
39. There is just one matter which the claimant raises which we should deal with now, that is that she has asked us to look at page 241 of the bundle which has a definition of abuse and we did that while we were deliberating. The claimant's suggestion is that both at the meeting on 15 June and at other times she had suffered abuse and she asked us to look at that definition. That definition says that abuse is about the misuse of power or control and the tribunal have considered whether they can see in the evidence before them any evidence of misuse of power and control by any of the managers

dealing with the claimant's case and we do not find any such misuse of power or control. What we have seen on the basis of witness statements, oral evidence and documents, is entirely reasonable management steps being taken to try to deal with the concerns that the claimant raises not least because, in the early stages of the grievance with respect to the team move she, herself, mentioned going to Paula Lowe's team.

40. The claimant commenced a period of sickness absence from 15 June 2021 and she has never been well enough to return to work since then. She remains in employment but a decision was made to move her to Ms Lowe's team and that was confirmed by Mr Jenkinson to her on 18 June 2021. Mr Jenkinson's evidence was that Ms Lowe has been responsible for managing the claimant and, although she has not attended work, they have an on-going and good relationship.
41. The claimant referred the matter for early conciliation to ACAS on 18 June.
42. On 22 June all staff were transferred to the respondent and the claimant presented her claim to the tribunal on 18 August 2021.

The law and submissions

43. The relevant legislation is found in Equality Act 2010 (EQA). As stated, this is a disability discrimination claim, where the claimant has been found to be disabled under the definition in the EQA so there is no need to set that out here. The relevant parts of the relevant sections are as follows:

15 Discrimination arising from disability

- (1) A person (A) discriminates against a disabled person (B) if—
 - (a) A treats B unfavourably because of something arising in consequence of B's disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

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.
- (4) –
- (5) -

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 a duty in relation to that person.

26 Harassment

- (1) A person (A) harasses another (B) if—
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) -
- (3) -
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
 - (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.

47. Section 136 EQA provides that *“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, unless A shows that they did not contravene the provision”*. This requires the tribunal to consider, on the oral and documentary evidence before it, whether there are facts which point to discrimination under the sections relied upon.

48. The complaint of a failure to make reasonable adjustments was part of this claim. The relevant sections are as set out above. The tribunal’s task is to first consider the proposed provision, criterion or practice (PCP) and determine whether there was a PCP that placed the claimant, as a disabled person, at a substantial disadvantage. The question of whether there was substantial disadvantage requires identification of a non-disabled comparator (usually in these cases, a hypothetical comparator) who would not suffer the disadvantage. If there is such a PCP and the employer has knowledge of the disability and its effects, the tribunal will move to consider whether the respondent can show it has taken such steps as were reasonable to avoid that disadvantage. This requires careful analysis of the evidence and finding of the relevant facts to which the legal tests should then be applied. In considering what steps would have been reasonable,

with the burden of proof resting on the employer, the tribunal looks at all the relevant circumstances and determining that question objectively, may well consider practicability, cost, service delivery and/or business efficiency. The central question is whether the respondent has complied with this legal duty or not (see Tarbuck v Sainsburys Supermarkets Ltd [2006] IRLR 664). Guidance is also provided in Environment Agency v Rowan [2008] IRLR 20 that the tribunal should look at the nature of any substantial disadvantage caused to the claimant by any PCPs before looking at whether there was any failure to make reasonable adjustments. The purpose of such adjustments as are reasonable is to ameliorate the disadvantage as identified.

49. The complaint of discrimination arising from a disability needs no comparator but the tribunal needs to consider what facts, if any, show unfavourable treatment linked to the disability. In Basildon and Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305, that was said to need two steps. That is that there has to be “something” which is unfavourable and, secondly, that it must arise in consequence of the claimant’s disability. If that is shown, the employer can seek to show with evidence, that it had a legitimate aim which it used proportionate means to achieve.
50. The claimant also complains of harassment. The tests are as set out in section 26 with the burden of proof resting on the claimant to show unwanted conduct related to disability. She also has to show that the unwanted conduct had the purpose or effect of violating her dignity or creating an intimidating etc environment. The question of whether any unwanted conduct related to disability had that effect must be considered objectively taking into account the claimant’s subjective perception. In Grant v HM Land Registry and another [2011] IRLR 748, the Court of Appeal reminded tribunals that they should not “*cheapen the significance*” of the words of the harassment section as “*They are an important control to prevent minor upsets being caught by the concept of harassment*”.
51. The tribunal is also reminded of the relevant sections of the Code of Practice on Employment (2011) published by the Equality and Human Rights Commission (EHRC), particularly with respect to guidance on what might be reasonable steps in a reasonable adjustment case. Paragraphs 6.23 to 6.29 of the Code reminds us that what is reasonable will depend on all the circumstances of the case.
52. We heard oral submissions from Ms Gray. In summary, she asked the tribunal to consider that the claimant was inclined to embellish, for instance, in relying on something in an OH report which had not been said. She reminded us of the legal tests, submitting there was no less favourable treatment in consequence of disability and, even if there was, the respondent can show a proportionate means of achieving a legitimate aim when discussing timekeeping with employees. She submitted that there was no PCP as identified, and specifically, in this case, factually the notice of team change was not short. Finally, as far as the harassment claim is concerned, she submitted that the respondent had done all it could to

support the claimant. She referred us to the case of Mr F Ahmed v The Cardinal Hume Academies UKEAT/0196/18 which reminds us that one of the considerations in a harassment claim is whether it is reasonable for the unwanted conduct as identified to have the effect of violating the claimant's dignity or creating an intimidating etc environment. Ms Gray submitted that the claims should be dismissed.

53. The claimant also addressed the tribunal. She reminded us to look at the definition of abuse at p241 and submitted that definition applied to the incident on 15 June 2021. She did not accept that she has embellished her account or her case. She submitted that the respondent had failed to do enough to support her with her mental health and pointed to the fact that she had asked the respondent to carry out disability awareness training but it did not happen. She submitted she did not have sufficient notice of the team move and felt harassed and abused by the respondent. She asked the tribunal to find in her favour.

Conclusions

54. We now provide the conclusions on the questions as set out in the list of issues. There is no issue with the claim being out of time and, as indicated, there is no issue that the respondent knew about the disability as has been found.
55. We deal first then with the claim of discrimination arising from disability. In issues 2.1 and 2.1.1 the question is whether the claimant was treated unfavourably by Linda Carmen-Rigden raising the issue of her tardiness in a meeting to discuss the complaint raised by the claimant against her team leader Emma Page on 25 May 2021. Of course, the facts are that that issue was discussed on that day. The tribunal does not accept, as the claimant appears to suggest, that there was any challenge to her disability or to the symptoms and of course no further action was taken; it was simply a discussion. That does not amount to unfavourable treatment but is an entirely reasonable matter to mention in a meeting with a member of staff.
56. Even if it was unfavourable treatment, which we find it was not, we go on to decide other tests which arise under that section. The first appears at 2.2 which is whether the raising of that issue arises in consequence of the claimant's disability and the tribunal simply has insufficient evidence that there was any such consequence which is connected to her stress and anxiety. The claimant, with the burden of proof resting on her, has told us nothing about her health leading to possible issues with timekeeping.
57. In any event, we also go on, even if she could have shown that, to decide under issue 2.4 - whether the respondent raising such an issue is a proportionate means of achieving a legitimate aim. We consider the matters shown at issues 2.5.1, 2.5.2 and 2.5.3 which is whether the treatment was appropriate and reasonably necessary, whether anything less discriminatory could have been done and how the claimant and respondent needs should be balanced. It appears to the tribunal that the respondent was appropriately raising issues of concern in a manner which is the least discriminatory as it could be, that is in an open discussion with the claimant.

The respondent clearly has a legitimate aim in ensuring that the work that should be carried out is carried out and that people abide by the working hours which they are paid to work to. Even if the claimant had succeeded in showing other parts of the test, the respondent was entirely justified in raising that as an issue at the meeting on what was probably 26 May. That claim for discrimination arising from disability therefore must fail.

58. Turning then to the reasonable adjustment claim which appears under issues 3, we do not need to deal with 3.1 as the respondent has accepted knowledge.
59. Issue 3.2 is the provision, criteria or practice which is said to be "*the requirement for significant changes in the workplace to be implemented without sufficient notice*". There is some slight amendment to that which is not particularly controversial, which is the change that the claimant is there referring to is the decision to move her to another team. So, we considered whether there was such a PCP either generally or in this case. We cannot find that there was such a provision, criterion or practice given that the move was proposed at the end of March and was stated to be a clear decision towards the end of May and again on 10 June. Although the final decision about which team was not communicated to the claimant until 15 June, she could not have understood anything other than she would be moved to one of the teams suggested. We do not find that there was a PCP in this case.
60. However, if we are wrong about that, we go on to consider the other tests, namely at issue 3.3 whether the PCP "*put the claimant at a substantial disadvantage as compared to somebody without her disability in that on 15 June 2021 it caused her a significant deterioration in her mental health leading to a panic attack*". So, the question here is whether the claimant can show such substantial disadvantage from the shortness of notice. Again, the tribunal cannot say that we have had evidence to that effect. Clearly the claimant was upset at being told that she was moved teams, but there was nothing to suggest that it was particularly what she considered to be short notice that caused any substantial disadvantage. The tribunal does not agree that there was a substantial disadvantage that was linked to the claimant's disability.
61. The next question is whether the respondent would have known there might be such a disadvantage and for similar reasons that the tribunal could not have been aware, neither could the respondent. The claimant appears to rely upon what was said in the Occupational Health report over a year earlier which made reference to being given notice of a change of hours but that is simply not sufficient to indicate to anybody, the tribunal or indeed the respondent, that there was a substantial disadvantage. The claimant, again the burden of proof resting on her, has shown no such disadvantage.
62. The next question which appears under issues 3.5 to 3.7 do not need to be addressed because the claimant had not been able to show that there was a duty to make reasonable adjustments. She had been given notice of this intention to move her; she may well have resisted it and not wanted it, but it was not particularly short notice. The respondent had made several

adjustments through the claimant's employment. The claim that there was a failure to make reasonable adjustments therefore also must fail.

63. Turning then to the harassment claim, these are under issue 4.1 and 4.1.1 reads:

"During the claimant's anxiety attack on 15 June 2021 Luke Jenkinson informed the claimant that the reason for the short notice change to the claimant's team and the team leader was done to support her."

64. 4.1.2 reads:

"on 15 June 2021 Luke Jenkinson informed the claimant that the decision to alter her team and team leader would not be changed."

65. 4.1.3 reads:

"On 15 June 2021 Luke Jenkinson remained with the claimant whilst waiting for the ambulance despite the claimant asking to be left alone."

66. Our findings of fact make it clear what we have found in relation to these matters but it is set out here for clarity.

67. The tribunal is not completely sure that the comment attributed to Mr Jenkinson at 4.1.1 was in fact something that he said, but it is clear that he did say that the change was done to support her whether or not he made reference to any short notice change is not clear. In any event, it is accepted that a comment similar to that was made on that date. Similarly, it is accepted that he also told her that the decision had been made and would not be changed. What is less clear is the allegation that he remained in the room when she had asked him to leave the room. We do not find that Mr Jenkinson understood that he was being asked to leave the room and therefore that part cannot be made out.

68. We therefore turn to issue 4.2 which is whether what happened was unwanted conduct; that is whether a manager saying this is being done to support you and that the decision would not be changed, can amount to unwanted conduct. To an extent, there is a strong possibility that could amount to unwanted conduct. It is clear the claimant had by this time made the decision that she did not want to move teams. So, we accept that that decision being communicated, on balance, amounted to unwanted conduct.

69. What is less clear is whether it related to her disability (issue 4.3). We consider that in the circumstances, given that the decision was, to a large extent, to deal with her stress and anxiety, even though there were other considerations about business need and other members of staff, to some extent at least, it related to disability.

70. So, we turn then to the final questions relating to harassment. First, whether the conduct had the purpose of violating her dignity or creating an

intimidating hostile, degrading, humiliating or offensive environment for her, that is issue 4.4. We have no hesitation in finding there was no such purpose.

71. We therefore turn to the question of whether it had that effect under issue 4.5. For this we have to take into account the claimant's perception, other circumstances and whether it is reasonable for the conduct to have that effect. The tribunal is quite clear in its finding that, although it is possible that the claimant had that perception, all the other circumstances of the case indicate to us that it was not reasonable for the claimant to feel that that it amounted to harassment. All the evidence that we have seen and heard points to an employer and managers doing their best to sort out what was a difficult situation.
72. We have had to take into account the claimant's perception, but we find that it was not reasonable for her to believe her dignity was violated or that an intimidating etc environment had been created by Mr Jenkinson (or indeed Ms Forder) saying anything about supporting her and that the decision would not be changed. All the facts as set out by us point to a careful consideration of options and a reasonable way of communicating with the claimant and dealing with what then happened when she had a panic attack entirely appropriately. The claim for harassment therefore must also fail.
73. That means the claimant's claims under the list of issues must all fail.
74. The claimant in her limited questions to the witnesses and in her submissions suggested that she was claiming a failure to make reasonable adjustments because she had asked for disability awareness training. This was not in the list of issues and is not formally addressed. The tribunal did hear evidence of training undertaken and provided by the respondent and although it is possible that there might not have been training with that exact title of "Disability Awareness", it appears to us, on the evidence before us, that there was comprehensive training around equal opportunities and, in particular, disability, and policies to cover such situations as this with attention being given to Occupational Health reports and how to consider reasonable adjustments. Of course, there might always be room for more training and the respondent might wish to consider such training if it is not already covered in existing training. But that does not mean that the tribunal would have found any failure to make reasonable adjustments related to that issue.
75. For all the reasons set out above, the claimant's claims for disability discrimination under EQA fail and are dismissed

Employment Judge Manley

Date: 14 August 2023

Sent to the parties on: ..16 August 2023.

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For the Tribunal Office