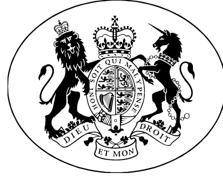

EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mr Mohamed Ahmed **Tesco Stores Limited**

Heard at Reading Employment Tribunal **On**: 8-10 August 2023
Before: Employment Judge Manley
Ms J Stewart
Ms H Edwards

Appearances
For the Claimant: In person
For the Respondent: Ms C Goodman, counsel

JUDGMENT

1. As previously determined, the claimant was disabled by way of anxiety or depression under The Equality Act 2010 from 19 April 2021. He was not disabled before that date.

2. There was no direct discrimination because of disability.

3. There was no failure to make reasonable adjustments.

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. By claim form presented on 11 September 2021, the claimant brought claims for disability discrimination. Two preliminary hearings followed to agree a list of issues and determine the claimant's status as a disabled person under The Equality Act 2010 (EQA). In short, it was found that the claimant was disabled by reason of anxiety and depression from 19 April 2021, after a concession by the

respondent. It was determined that the claimant was not disabled by reason of other health conditions relating to his ear or arm.

2. A list of issues had been drafted at the preliminary hearing and these were amended by the respondent's representative after the second preliminary hearing. These will be addressed in our conclusions. In summary, the claimant brings several claims of disability discrimination. For the direct disability discrimination claim, he was ordered to pay a deposit which was paid. The direct disability claim contains 6 allegations at Issue 3.1. Three relate to allegations concerning one manager Mr Price and three to another manager Ms Secular-Clark.

3. The claimant also brought claims of disability harassment which are two allegations about Mr Rajput at Issue 6.1. The failure to make reasonable adjustments claim has one specified provision criterion or practice (PCP) and one suggested adjustment at Issues 5.2 and 5.5.

4. A claim for discrimination because of something arising in consequence of disability could not proceed as it relied on a health condition which had been found not to amount to a disability.

The hearing

5. At the commencement of the hearing, we dealt with preliminary matters. Although the list of issues had been agreed, it appeared to the tribunal that the claimant was asking us to consider that he was disabled under EQA before 19 April 2021. It was not clear whether this would be a reconsideration as there had been an earlier determination. In early discussion he suggested his mental health issues started on 30 June or early July 2020, but then said that it became more serious in November 2020. This was in part because of a document which is mentioned later at (paragraphs 16 -18) related to pages 193 to 195 of the bundle.

6. In any event we took evidence from the claimant and from Mr Price on this question and left our deliberations until the end of the hearing. We cover that in our conclusions.

7. The hearing continued in the usual way. We heard from the claimant on the first day and the respondent's witnesses on the second day. We heard submissions from both the claimant and Mr Goodman. We then deliberated and gave judgement on the third day.

8. We had a relatively substantial bundle of documents of over 600 pages, but we only needed to consider a small proportion of those as referred to in witness statements and those that the claimant specifically asked us to look at.

9. The claimant had prepared a short witness statement and another one regarding disability. There were four witness statements for the respondent but one of those witnesses, Mr Rajput, couldn't attend and it was explained to the claimant that this meant we would put less weight on that evidence as he could not be

cross examined. We heard from Mr Price, Ms Secular-Clark and Ms Jameson and those witnesses were cross examined.

Facts

10. This then is a summary of the facts we needed to find to determine the claims as now clarified.

11. The claimant started at the respondent's Reading distribution centre on 7 November 2017, as a warehouse operative. He worked eight-hour night shifts between 10pm and 6am. The respondent is, of course a large employer, in the business of retail. It has a number of policies; the usual ones for employers of this size. We were only referred to one such policy in this hearing which was the absence management policy. We also saw that there is common use by managers of standard forms and letters when discussing matters with employees and processing outcomes.

12. Mr Price was the claimant's line manager. Another shift manager was Ms Secular-Clark who was what is known as a buddy manager with Mr Price, which meant, from time to time, they oversaw each other's crew.

13. For completeness, the tribunal does not accept, as was suggested by the claimant, that Ms Secular-Clark had any knowledge of any mental health condition that he might have had.

14. On 30 June 2021, the claimant told us there was an incident involving a Mr Tarczan which was about the fact that the claimant had made a mistake on Goods-In. The claimant's evidence is that Mr Tarczan said words to the effect of, that he didn't know whether the mistake had been done on purpose. The claimant was very upset by this comment and after he had sent an email, he was removed from that Goods-In skill.

15. Another matter which arose around the same time was a mistake the claimant made on PI adjustment and there is a note of an informal discussion about that with Mr Price. Mr Price accepted that there was another discussion with the claimant about what Mr Tarczan had allegedly said, but he couldn't remember the details and there was no note of any such conversation. Neither could Mr Price remember whether he had said the words attributed to him in issue 3.1.1. which we come to, but which, in essence alleges Mr Price said that he was not going to get involved as it was not serious enough. It seems likely that something to that effect was said because the claimant remembers it. In any event, there was no further action on either matter. The claimant's evidence is that Mr Tarczan's alleged comment caused a serious collapse in his mental health.

16. One document which we needed to consider is a "*workplace adjustment checklist*", on pages 193 to 195 of the bundle. It has handwriting on it, on the top right-hand corner, with the date 05/11/20 and everyone at the hearing first thought that that was the date of the document. It was then noticed at the bottom of the document it had a January 2021 date and we later heard from Ms Jameson that meant it could not have been produced before January 2021.

Neither Mr Price nor the claimant could be precise about the date of that document.

17. The claimant confirmed that it was his handwriting on what appears to be a sticky note referring to a lack of any adjustments for his ear and the date on the top right-hand corner. That document was mostly concerned with the claimant's ear infection (which we will come to) and means that meeting at which the document was written could not have been on 5 November 2020. On a balance of probabilities, it was not held until February 2021 at the earliest, because the claimant was not off with the ear problem until then, between 12 and 22 February.

18. The significance of this document according to the claimant is that Mr Price circled "*Yes*" to a question about mental wellbeing. This is in a box on the respondent's standard form and has a question about mental wellbeing with a question mark and then a number of bullet points, specifically about mental health matters. All that Mr Price seems to have done is circled Yes, entering no other details. The claimant believed that the tribunal should look at this document as he believed that it was relevant for the question of when his disability arose. So that was something that we asked Mr Price about. Mr Price recalled that the claimant had mentioned something about the impact of his mental wellbeing, but he didn't think it was significant enough to say more in the details box, but he thought he should circle Yes in case it became a problem later. The claimant did not tell us anything more about that discussion. Clearly the claimant's mental health was mentioned then, but our finding is that it could not have happened before February 2021, at the earliest.

19. As mentioned, the claimant was off work with an ear infection, between 12 and 22 February 2021. A phased return was discussed and some short-day shifts were offered which the claimant could not accept because of his family responsibilities and his concern about reduced pay. Later on 25 March, it was agreed that he would work for one to two weeks on 50% hours on nights and the date of 9 April was given for that to be reviewed. It was actually reviewed on 7 April and the claimant reverted to full time hours on 8 April because there was no longer any fit note covering shorter hours.

20. There was then an absence review meeting arranged for 26 February but the claimant was on sick leave. It started on 30 March and then continued on 20 April. The discussion with Mr Price was around the claimant's absence record, which had now reached the trigger in the policy being at 9.2%, the trigger being 3%. The discussion was about issues with the claimant's ear. Mr Price asked the claimant (page 242) whether he was supported and the claimant replied:

    "Only what you can give, you've already gave me reduced hours, it's all right."

    The claimant refused the chance of an occupation health referral, saying he was okay with his GP. There was no record of any mention at that meeting of mental wellbeing or ill health.

21. On 19 April 2021, the claimant had a GP consultation (page 585) the bundle. This was a telephone call and that document reads that it was a call to: "*Discuss mental health*." There was mention of the claimant's work at the respondent's distribution centre and records: "*Also has some issues at work about 6-7/12 when one manager accused of him doing the mistake intentionally, which was completely wrong*." There's then other reference to problems at work, as well as some basic history.

22. The claimant's health problem was diagnosed as "*Mixed anxiety and depressive disorder (first).*" There was a prescription for Sertraline of 50 milligrams and then some details of what the doctor said had happened on examination. The doctor recorded this:

> *"Patient calm, not impatient, mood euthymic. Spontaneous, alert in conversation, anxiety not apparent from speech, seemed genuine what patient was telling – filled mostly with blame and anger towards wife and work. Responding well to questions in good tone, thoughts clear in reasoning logical and engaging, expressing well. No suicidal thoughts."*

23. That was all that happened at that stage. There is no indication, nor has claimant said, that the respondent saw that document or knew about the consultation at any point before these proceedings. The claimant did not tell the respondent that he had spoken to the doctor or had that diagnosis until a little later. On the basis of what the doctor has recorded, there is no mention of any symptoms which would be obvious to the respondent about the claimant's mental health. None of the sick notes which the claimant gave to the respondent mentioned anxiety and depression.

24. On 22 May 2021, the claimant had an injury to his arm at work. This was when he was lifting and he felt pain; he saw a first aider and a form was completed. He also saw Ms Secular-Clark who took a short statement. The claimant went to A&E and was discharged without a follow-up. Ms Secular-Clark checked the CCTV footage to see how the injury had been caused. She looked that morning at footage of the two aisles that he had covered, but could not see any injury being caused. Later the same day, when she was back for the next night shift, she looked at the claimant's whole assignment, which he said was about an hour. She could still see no sign of injury, but noticed that the claimant was lifting with one arm, contrary to training. She did not think there was a need to save the CCTV footage because she could not see what had caused the injury. But she also gave evidence that she could not have saved it because there had been a change to the system. She referred the matter to the health and safety representative who was also the duty manager Mr Rajput. Under "*next steps*" on the form, she wrote: "*Refresh for picker by training team*". (page 288). The investigation report contained all the necessary information.

25. When she showed the investigation report to the claimant, he was upset about that comment. Ms Secular-Clark's evidence was that he asked for a more formal investigation as he wanted his trade union representative to be present. She therefore referred the matter for investigation to someone else, Mr Nagy-Benko

who held various meetings with the claimant on 19 and 27 June and 8 July. But in the end, no further action was taken with respect to that matter.

26. Going back then to 22 May, the claimant attended the same day in the evening, for a shift at 10pm. Mr Rajput was the duty manager. At that point, the claimant handed his patient discharge letter from A&E to Mr Rajput. That appears at pages 272 and 273. That mostly deals with the arm injury which was the reason for him going to A&E and that was said to be: "*Likely MSK strain, should settle with rest, light duties at work*." We can also see under heading "PMHX" which we understand to be previous medical history, the word "*depression*" as well as, some other comments. The tribunal does not know if Mr Rajput saw that particular entry. There's no evidence that anyone else saw it, although Mr Price accepted that he might have seen the discharge letter at some point.

27. In any event, Mr Rajput told the claimant that no light work was available and the claimant has not suggested that any was available at that point. The claimant was told by Mr Rajput that he could work slowly and take breaks or go home. When the claimant later found that he could not continue working, he was told he could go home and he would be paid for the whole shift. The claimant was then away from work between 24 May and 14 June, with the injury to his arm.

28. On 23 June there was the further absence review meeting. Mr Price called that meeting as the claimant had passed the threshold for action to be taken under the policy. His absence levels were now at over 32% as opposed to the 3% in the policy. The notes of that meeting show a discussion about the claimant's absence levels and the most recent arm issues. The claimant was asked if he felt supported and he said "*Yes*". There is no mention at all of the claimant's mental health. There was a short adjournment of 12 minutes, and Mr Price decided to give the first absence warning. The tribunal finds that outcome was not predetermined. Although the adjournment was short, on the basis of the evidence before Mr Price at that point, it was not a surprising outcome and could be decided relatively quickly. There was no predetermination.

29. The claimant did appeal that first warning and he was informed that the decision to give the warning was overturned on 16 July. This was in large part because there was still an investigation underway into the arm injury. Mr Price agreed that the appeal came to the right conclusion.

30. On 19 July, the claimant put in a grievance. This raises a number of issues, many of which are repeated in these proceedings. But it also gave further details of his mental health issues at that time. The tribunal is satisfied that this is the point at which the respondent had knowledge of the condition which could amount to a disability.

31. Ms Jameson began to carry out an investigation into the grievance. She invited the claimant to a meeting, reminding him of employee assistance programme and some external support bodies. She referred the claimant to occupational health. There appears to have been a previous referral to occupational health and the respondent accepts there were some delay there, caused by the fact that the claimant was a night worker and because there was a possible need for a face-to-face appointment. That was difficult because of the pandemic. We do

not have definite details of when there was such a referral. In any event there was one in July.

32. The claimant was away with Covid between 22 and 28 July and he met Ms Jameson on return on 28 July. Shortly after that he accepted a reduction to four-hour shifts. The tribunal has not heard evidence of how that occurred or the reasons for it but there is reference to it in the occupational health report.

33. On 4 August, the occupational health appointment took place via phone and a report was dated the same day. It mentioned that the claimant had mood disorder because of work issues and that he had been to two talking therapy sessions. The report stated an appropriate resolution would help, but made no suggestions about what that meant. The report went into details of his arm injury.

34. One matter which the occupational health report refers to is at page 454.

> *"Mr Ahmed also appears to have developed a mood disorder secondary to his perception of how his workplace situation has been managed by his employer. Unless these concerns could be satisfactorily resolved, then the chances of improvement in his symptoms must remain guarded. The recent reduction in Mr Ahmed's working hours, while providing some protection from his arm injury, is likely to have a negative impact on his mental wellbeing as a result of financial concerns."*

35. Ms Jameson, who was carrying out the investigation into the grievance, spoke to the four people named -: Mr Price, Ms Secular-Clark, Mr Tarczan and Mr Rajput. She also looked at a number of documents. She then prepared a detailed report. In essence, she did not uphold any of the claimant's complaints except she partially upheld that with respect to Mr Rajput as he had failed to document the discussion with the claimant about light work on 22 May. The investigation report was dated 20 September.

36. Before then, however, the claimant had presented his claim form to the tribunal on 11 September 2021. He had also begun a "*Lifestyle Break*" on 14 September 2021. He did not appeal the grievance outcome.

The law and submissions

37. As far as the law is concerned, this is a claim under EQA, in particular, the provisions at sections 13 for the direct discrimination claim and 26 for the harassment claim. The claimant also brings a claim which can only be brought for disability discrimination under sections 20 and 21 for the failure to make reasonable adjustments. The relevant parts of these sections read:

13 ***Direct discrimination***

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

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

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) -

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.

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) - (a)

(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.

(5) The relevant protected characteristics are—

- -
- *disability;*

39. Although there had been a previous determination of whether the claimant was disabled, the claimant asked us to consider an earlier time period of alleged disability so we needed to consider section 6 EQA which provides the definition of disability along with Schedule 1 EQA and the Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011).

40. 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.

41. There are a number of cases that guide tribunals discrimination cases and particularly in disability discrimination cases. Our findings for the most part rely on the findings of fact that we have made. 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.

42. 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 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 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.

43. We are 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.

44. 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. He also has to show that the unwanted conduct had the purpose or effect of violating his 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*".

45. The respondent's representative provided written submissions and the claimant made short oral submissions. There is no dispute about the legal tests which must be applied as set out above.

Conclusions

46. Our conclusions are provided by answering the questions raised in the list of issues, where that is still necessary. The first matter that arises in the list of issues is whether the claims are in time. It is not necessary for us to go into much detail about this, because, as will become clear, we have decided that the claim cannot succeed, even if it was brought in time. It is clear that one allegation is almost certainly not brought in time and that is the 30 June allegation about Mr Price (issue 3.1.1). We have had no evidence on, whether it would be just an equitable to extend time for that claim. In any event, the claims fail and that one in particular could not have succeeded because the claimant was not disabled at that time.

47. We go on and deal with other matters under the list of issues, beginning with the new question of whether the claimant was disabled under the definition in EQA before 19 April 2021.

48. The tribunal finds that the claimant has not shown that he was disabled before that point. There is simply insufficient evidence of substantial adverse effects on his normal day to day activities. This claim has been progressing for some time; there was a preliminary hearing to determine disability and there is nothing to suggest that the claimant said then, that his disability had started before the 19 April 2021. The claimant's evidence on the time period he was asking us to consider was vague and the document he sought to rely upon was unhelpful. The first suggestion was at this hearing when he did mention some effects on his normal day to day activities to do with shopping and seeing friends. We are not satisfied that he has given sufficient evidence to show that that was a substantial adverse effect on his normal day to day activities. We note that the claimant did not visit a doctor about mental health issues before April 2021. That is not necessarily fatal to a finding of disability, but it is one of the factors that we will take into account. We also noticed that, with the exception of a mention about mental wellbeing to Mr Price, there was no other mention of mental health problems to the respondent in spite of there being a number of meetings with various people. Our finding is that the claimant was not disabled before that date.

49. We then consider the direct discrimination claim, under item 3 of the list of issues. We first have to consider whether the things the claimant complained about did occur and for a large part they did; but some did not. The first question at 3.1.1. is whether on 30 June 2020, Mr Price showed no support and said something about lack of seriousness of Mr Tarczan's alleged comment. The tribunal considered Mr Price an honest and open witness and he agreed it is possible that something like that might have been said but he could not remember. Given that the claimant remembered that being said, we find it was said by Mr Price.

50. Isse 3.1.2. is that Mr Price held an absence meeting on 23 June 2021 and it while there was an investigation ongoing. It is agreed that did happen.

51. Issue 3.1.3 is the allegation that Mr Price predetermined the outcome of the meeting and our finding is that Mr Price did not do that. As stated in our findings of fact, although the adjournment was short, the claimant's absence level was triggered within the policy and a first warning was an obvious next step.

52. Issue 3.1.4 concerns Ms Secular-Clark failing to obtain and preserve the CCTV footage on 22 May. Ms Secular-Clark did obtain the footage and she looked at it as she told us in some detail. It is accepted she did not preserve it and the tribunal accept Ms Secular-Clark's evidence, that she could not see what had caused the injury and she could not keep it because of a new system and she believed in any event it was unnecessary.

53. Issue 3.1.5 concerns Ms Secular-Clark opening the investigation into the concern about the claimant not working as he had been trained. That is because she saw him lifting with one arm. We find that she did so, partly at least, because the claimant asked for such an investigation so a trade union representative could be involved.

54. Issue 3.1.6 is whether Ms Secular-Clark gathered all the necessary information from the accident pack. We have found that she did gather all that information according to the respondence policies and she is given reasonable reasons for it not including the CCTV footage.

55. Having found that some of those matters occurred, what we now go onto consider, under Issue 3.2, is whether any of the things done amounted to less favourable treatment. The claimant has not identified a comparator, so we consider whether it amounts to less treatment than a hypothetical employee without a disability. There is no evidence that anyone without a disability or anyone at all would have received any different treatment. The claimant has not said that that was so, and there is simply no evidence to that effect. There are factual problems in relation to 30 June allegation, which has no chance in succeeding, but the same applies to the other allegations, even where we find something has happened, the claimant simply cannot show less favourable treatment.

56. If we are wrong about that and there is some less favourable treatment, we consider under Issue 3.3, whether it was because of his mental impairment. We find that the claimant has simply failed to show any connection between what

happened to him and his mental health issues. Some were connected to his ear problem and the dizziness associated with it, or his arm injury. Nothing that happened had any connection whatsoever to mental health. Mr Price was the only person who conceivably had any information that there was any potential issue about mental wellbeing and that was not at a level which should have suggested anything more than a mention of it. There is no connection whatsoever between what happened to the claimant and his mental impairment. That means that the direct discrimination claim must fail.

57. We turn then to the alleged failure to make reasonable adjustments. The first question we have to answer under Issue 5.1 was when the respondent knew or reasonably been expected to know of the claimant's mental disability and we have found that that was 19 July 2021, when the claimant raised the issue directly in his grievance.

58. We then look to the next question at Issue 5.2, is whether there was a provision criterion or practice (PCP). This is said to be "*An absence of support for the claimant's needs*". It is very difficult for the claimant to show such a PCP partly because it is very vague and it has remained so throughout the proceedings and indeed throughout this hearing. There is no evidence that there was such a PCP in relation to any of the claimant's health conditions, including his mental health when the respondent became aware. There was support offered by agreeing to shorter shifts; referring the claimant to occupational health; reminding him of employee assistance and external agencies and so on. The claimant did not suggest any other support that should be offered to him. The claimant simply cannot show such a provision, criterion or practice.

59. However, if we are wrong about that, we go onto decide the following question at Issue 5.3. Even if the claimant could have shown a PCP, did it put him at a substantial disadvantage? The claimant has not been able to show any disadvantage, although he seems to suggest there was likely to be a deterioration to his mental health. He has not given us that evidence and there is certainly none in the medical evidence, save for one comment referred to in the August report (paragraph 34 above), which actually suggested that reducing his hours might make his mental health worse. The other suggestion in the occupational health report is too vague for the respondent to know what changes could possibly be made with respect to his mental health. There is really no evidence at all of a substantial disadvantage which the claimant needs to show.

60. Although we do not necessarily have to answer Issue 5.4, as the claimant has not shown either a PCP or substantial disadvantage, we go on consider it. The question is whether the respondent could reasonably be expected to have known of the disadvantage. Simply put, given that we cannot find such a disadvantage, there is no reason that the respondent should have been able to identify such a disadvantage. This means that the respondent did not need to make any adjustments; the duty simply did not arise for it to consider any such reasonable adjustments.

61. It should be added here, following direct questions from the employment judge at this hearing, the claimant said for the first time, that the respondent could

have considered moving his workplace or shift hour patterns. This was never mentioned to the respondent nor was any evidence given of how that would have alleviated any disadvantage even if any had been found. The claim for failure to make reasonable adjustments must fail.

62. Turning then to the harassment claim under Issue 6. Issues 6.1.1 and 6.1.2 are largely factually correct. Mr Rajput did refuse light duties, although we heard that none were available. Mr Rajput did give the two options identified, to work slowly or go home. However, we do not find that it would have been financially disadvantageous to the claimant. He had been told that it would not be.

63. We turn then to the question of whether Mr Rajput's actions amounted to unwanted conduct at Issue 6.2. We find that it did amount to unwanted conduct as the claimant did want light duties.

64. The next question therefore, at Issue 6.3 is whether the unwanted conduct related to his mental health condition. There is no evidence that Mr Rajput knew of any such condition and the claimant did not tell Mr Rajput about it. The condition that was discussed with Mr Rajput was a sore arm and the light duties requested related entirely to that condition. There was no connection whatsoever between the unwanted conduct and the claimant's disability. The respondent did not have knowledge of it on 22 May.

65. In case we are wrong about that, we consider Issue 6.4 whether Mr Rajput's conduct had the purpose of violating the claimant dignity when he refused light duties. We find that he did not have that purpose

66. And turning then to the last issue at 6.5, whether it had the effect of violating the claimant's dignity etc. The tribunal accepts that the claimant was upset that light duties were not found, but that was not reasonable because the circumstances were other alternatives were offered to the claimant which he did not accept. In all the circumstances, it was not reasonable for the claimant to consider the conduct amounted to harassment, even if he had been able to show it related to his disability. The harassment claim must fail.

67. For all these reasons all the claimant's claims fail and are dismissed.

68. We then had to decide about the deposit which had been paid. The tribunal finds that our reasons given for the claimant to have failed in his allegations or arguments in connection with his direct disability discrimination claim are substantially the same as those provided in the reasons when the deposit order was made. The sum of £50, which was paid as a deposit, should therefore be paid towards the respondent towards its legal costs.

Employment Judge Manley

Date: 25 September 2023

Sent to the parties on: 26 September 2023

For the Tribunal Office