EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mrs. G. R. Vasiliu	v	**Amazon UK Services Limited**

Heard at: **Birmingham** **On:** **7,9,10,13,14,15 May 2024,**
4 June 2024
In chambers 4 & 6 June 2024

Before: **Employment Judge Wedderspoon**
Members: **Mrs. D. P. Hill**
Mrs. E. Shenton

Representation:
Claimant: **In Person**
Interpreter: **Ms. A. Canzi (Italian)**
Interpreter: **Ms. Gabriela Romanian (remote)**
Interpreter: **Ms. Calabri (Italian /remote)**
Respondents: **Ms. K. Taunton, counsel**

JUDGMENT

1. The claim of automatic unfair dismissal is not well founded and is dismissed.
2. All the claims of protected interest disclosure detriment are not well founded and are dismissed.
3. The claims of direct disability discrimination are not well founded and are dismissed.
4. The claims of indirect disability discrimination are not well founded and are dismissed.
5. The claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 from 13 December 2021.

REASONS

1. The claimant brought claims of protected interest disclosure detriment and automatic unfair dismissal, direct and indirect disability discrimination. There was no dispute between the parties that from 13 December 2021 the claimant was a disabled person by reason of depression within the meaning of section 6 of the Equality Act 2010. The issue was whether the claimant met the definition on 11 and 12 December 2021. The claimant made no complaint of discrimination for the period 11 to 12 December 2021.
2. The claimant's case is that she was required to attend work with COVID despite being informed by the NHS she should self-isolate. As a result of making three alleged whistleblowing complaints, she says she was subject to detrimental treatment and eventually dismissed. The claimant's case is that she was directly discriminated against by reason of her disability of depression by being required to attend work when signed unfit by her doctor; the respondent ignored the risk assessment; and the respondent took into account her "idle" time when she was sick. The claimant further complained that the provision of productivity targets to put away 2000 items per night placed her as a disabled person at a substantial disadvantage so that she received a first written warning.
3. The parties agreed the list of issues at page 218 of the bundle save for one point at paragraph B 3.1(c) which was amended by consent to remove "friend" of the claimant to "colleague" of the claimant with reference to Mr. Stefan Pirvu. The agreed amended list is set out below.

   List of Issues
   Unfair Dismissal s.103A ERA 1996

4. Was the claimant dismissed? The respondent accepts that the claimant was dismissed on 26 March 2022 by non-renewal of a fixed term contract. The claimant's position is that her contract was due to expire in January 2023.
5. Was the reason of principal reason for the dismissal that the claimant made a protected disclosure (as set out below at paragraph 3)? If so the claimant will be regarded as unfairly dismissed.
6. Did the claimant make one or more qualifying disclosures as defined in section 43 B of the Employment Rights Act 1996
7. The claimant relies on the following disclosures :

a. she contacted Amazon's head office in America by e-mail on 11 November 2021 and advise them that she was being forced to work when she had COVID and should have been self-isolating
b. she had a VC meeting via chime with Sherrie Osborne at head office on 28 November 2021 at 6:00 pm UK time when she advised Miss Osborne that other people were being forced to come into work whilst they had COVID. This meeting was recorded;
c. she met Miss Osborne at a second VC meeting at 6:00 PM on 13 December 2021 when she was showed Miss Osborne documentary evidence that it was not just she who was being required to work whilst they had COVID. The claimant told Mrs

Bourne she wanted Amazon to enforce the rules on health and safety in the workplace. Also present were Tim McCray another US manager and the claimant's colleague Mr Pirvui.

Did she disclose information?

7.1.1 Did she believe the disclosure of information was made in the public interest?
Was that belief reasonable?
Did she believe that the disclosures tended to show that :

a. a person had failed was failing or was likely to fail to comply with any legal obligation;
b. the health or safety of any individual has been was being or was likely to be endangered; and/or;
c. information tending to show any of these things had been was being or was likely to be deliberately concealed.

Was that belief reasonable?

If the claimant made a qualifying disclosure it was a protected disclosure because it was made to her employer.

7.1.2 The claimant says she was subjected to the following detriments

7.1.3 being constantly marginalised

(a) the claimant says she was marginalised in the period 20 November 2021 to 11 December 2021 by the following people
(i)Connor the transfer line manager;
(ii)Dzhivelek Emin (login Dzhivele) Leader stow;
(iii)Manjeet Singh (F/F line manager);
(iv)Arun Dees; and
(v)Sanvir Khunkhun (claimant's line manager).

(b) the claimant was marginalised in that period from 20 November to 11 December 2021 in the following ways:

(i) her name was removed from the critical role list by Sanvir Khunkun critical role duties consisted of managing the buffer and staff solving problems related to items and people;

(ii) all of the above named managers sent to her to different areas from the area known as the buffer allocated on the stow board by the shift manager. As a result she was separated from the rest of the collective and had to work alone.

(c)The claimant says she was marginalised by the following people between 11 December 2021 and 26 March 2022;
(i)Manjeet Singh login Manjesi the transfer line manager;
(ii)Dzhivelek Emin (login Dzhivele) Leader Stow;
(iii)Ranescu Sorina Cornelia Step up Lead Stow;
(iv)Catalin Marica Step Up Lead Stow; and
(v)Sanvir Khunkhun line manager Stow.

(c) The claimant relies on the following alleged acts of marginalisation during that period 11 December 2021 to 26 March 2022

(i) being sent alone to different areas from the area allocated on the stove board where she was separated from the rest of the collective and had to work alone;
(ii) Sanvir Khunkhun removed the claimants name from the critical role list problem solve IDRT cubiscan, FUD
(iii) when she wanted to apply for the step up lead opportunity Sanvir Khunkhun told her that no you are not able to lead;
(iv) her manager Sanvir Khunkhun blocked her access to the China video platform;
(v) she could not participate in the project organised by site BHX5 by the BHX1 sites that was to act as critical role and work in Derby for a limited period of time. The claimant says Sanvir Khunkhun always said no to this; and
(vi) her manager Sanvir Khunkhun did not put her name on the list for the apprenticeship opportunity.

7.1.3.1.1 Being mocked at work. The claimant alleges that:

she was mocked by Cristina Petrescu on 11 December 2021 and then every time she walked past Miss. Petrescu, Ms. Petrescu stared and whispered *"you see that you urinated on by piss"*

(a) she was mocked by Dzhivelek Emin from 20 November 2021. He scolded her for low productivity, told her that she was incapable and that she should be ashamed of wearing her Amazon badge. He told the claimant he must move her because people suffering from cancer at Amazon work more efficiently than the claimant. Initially this happened approximately once every two weeks but it intensified to around once per day from 12:00 December 2021. On 26 March 2022 Mr Emin called the claimant to a meeting when he was particularly aggressive towards her.

7.1.3.2 being abused (shouted at) by HR. The claimant alleges that

(a) on 11 December 2021 she was involved in an abusive disciplinary meeting with Christina Petrescu. She says Ms. Petrescu wanted to punish her for not turning up to work when she had COVID. At the meeting, Ms. Petrescu told the claimant she was at risk and was going to be investigated for gross misconduct. When the claimant tried to tell her that she should follow the disciplinary regulations (referring to the fact that she had not had a formal invitation to the meeting and was not accompanied) Ms. Petrescu shouted at her and said "don't tell me what regulations I have to follow." The claimant suffered a panic attack for 30 to 40 minutes during the meeting.

<u>Disability Discrimination</u>

8. The respondent accept that the claimant had a disability (depression) from 13 December 2021. The claimant says that she was disabled from and including 11 December 2021.
8.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 Anne from 11 to 13 December 2021 ? The tribunal will decide
8.2 Did she have a physical or mental impairment?
8.3 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

8.4 If not did the claimant have medical treatment including medication or take other measures to treat or correct the impairment?
8.5 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
8.6 Where the effects of the impairment long term. The tribunal will decide
(a) did they last at least 12 months or were they likely to last at least 12 months?
(b) If not were they likely to recur?

Direct discrimination

9. Was the claimant subjected to the following treatment ?
9.1 the respondent instructed her to attend work on 17 December 2021 while she was unfit and signed off by her doctor. The claimant says her line manager Sanvir Khunkun forced her to attend work saying that if she took time off she would have to take it as annual leave;
9.2 the respondent ignored the claimants risk assessment carried out on 14 December 2021 by instructing her to return on 17 December.
9.3 The respondent took into account the claimants idle time when she was sick but still attending work (between 17 December and 19 March 2022 inclusive)
9.4 if so did that constitute less favourable treatment than a hypothetical comparator who did not have depression but had a sick note?
9.5 If so what's the reason for that treatment the claimant's disability.

Indirect discrimination

9.6 The claimant alleges that the respondent had the following provision criterion or practise :
9.7 all FC associates were subject to productivity targets requiring them to put away 2000 items per night.
9.8 This PCP was applied to the claimant while she was signed off sick by her doctor but still attending work. The claimant could not comply with the targets because of her depression.
9.9 The PCP substantially disadvantaged the claimant and that she was subjected to disciplinary proceedings for not being able to comply with the targets and she received a first written warning on 9 February 2022 for failing to maintain levels of productivity.
9.10 If which is denied the respondents application of the provision criterion or practise put FC associates with depression at a disadvantage, it is asserted that the respondents application of the PCP is objectively justified being a proportionate means of achieving the following legitimate aims :
assisting employees to perform their role to the best of their ability by identifying barriers and/or support required to assist the achievement of the same;
9.11 the achievement of a satisfactory level of performance to ensure efficient customer service delivery.

The hearing

10. The case had been listed for 8 days with a time estimate given to the claimant of cross examining 7 witnesses in 1.5 days. 8 May 2024 was a non-sitting day so that the listing was reduced to 7 days. The claimant requested that she be given 3.5 days to cross examine the witnesses. The Tribunal provided this time to the claimant taking into account she was a litigant in person with a mental disability who required an Italian interpreter, Antonella Canzi (for the hearing).
11. The parties were reminded that a realistic listing should be given to a case at the listing stage; taking into account the need for an interpreter; reasonable adjustments for a disabled litigant in person, Tribunal reading, deliberation and writing time.
12. The claimant also raised that her witness Mr. Stefan Pirvu required a Romanian interpreter. An interpreter Ms. Gabriela was obtained (to work remotely) for the Thursday morning of the first week for his evidence.
13. The claimant applied to call Mr. Zoltan Demeny as a witness having exchanged his statement very late and outside the time agreed in the directions. The respondent did not seek to challenge his evidence and the Tribunal allowed him to give evidence.
14. The parties agreed that the Tribunal should read the witness statements and all the documents referred to therein. Evidence commenced on day 2.
15. The claimant made a request for an adjournment at the end of the morning's evidence on day 5 due to tiredness which was unopposed.
16. The Tribunal provided guidance to the claimant in respect of her cross examination of witnesses; she should ask questions relevant to the list of issues because the Tribunal would be determining only those matters. The claimant frequently strayed from these issues and the Tribunal reminded the claimant that the list of issues was relevant to the determination of the case. On day 6 the claimant starting cross examining Mr. McRae about whether the respondent was informing the NHS in accordance with its legal obligations that certain employees had COVID. The respondent objected. The Tribunal determined to disallow this line of questioning. It was not a matter contained in the list of issues which sets the parameters of trial preparation and was an extension of the claimant's allegations against the respondent.
17. The claimant was guided by the Tribunal to challenge witnesses in respect of any matters she disputed in the witness statements. She was also informed about her opportunity to set out her comments about the respondent's case in her submissions at the end of the case.
18. On making oral submissions the claimant sought to adduce additional evidence having disclosed this two days before to the respondent. The new evidence consisted of an email dating back to January 2016 to another employee of Amazon asking them to review and electronically sign documents and a further document dated May 2021 to another employee referring to signing documents to accept employment with the respondent and notice, if not signed the employment start date would be postponed. The claimant stated it was only recently a friend had passed the information to her as it was relevant to another case running in London. The respondent objected on the basis it had closed its case and could not deal with the evidence at this late stage and questioned the relevance of the disclosure. The Tribunal did not consider that the evidence was relevant to the issues it had to determine; they did not concern the claimant and furthermore that the respondent

was ambushed at this late stage; it was unfair and not in accordance with the interests of justice to allow the evidence to be introduced at this late stage. The claimant's application was refused.

FACTS

19. The claimant was employed by the respondent as a tier 1 fulfilment centre associate ("FC") at Amazon's BHX1 distribution centre. The claimant's offer letter at page 373-385 provided a fixed term period of employment from 16 May 2021 (terminating automatically) to 22 January 2022.

Claimant's tasks

20. The claimant worked primarily in "Stow" which involves putting stock away into storage locations and updating Amazon's inventory system. The claimant was also in a problem solver role which involved dealing with queries from other fulfilment centre associates about items to be stowed and correcting systems issues to ensure the smooth flow of the fulfilment centre. If the business required it, the claimant was required to work in "Pick" collecting items from different locations within the site and sending them to delivery platforms.

Allocation of tasks

21. Employees are assigned an area in which to work in the fulfilment centre at the start of a shift which is displayed on the stow board. Associates move around the area within a defined space to put away incoming goods. During any shift depending on the volume of incoming goods the respondent moves associates to where the higher volume of work is, so that associates may move to a different area than where they were originally allocated on the stow board. Sometimes associates could also be moved to outbound to work in pick if the need arose and they were pick trained. In the Stow process Amazon does not tell individuals which aisle they should go to and stow; associates choose which stow aisles according to their choice and where they can find space. FCs are not left alone and there are people stowing nearby or in the same aisle; they are moved in groups of associates depending on how many people are needed in other areas. When Amazon needs to move associates, the practice is for the area manager to direct the lead to move a certain number of associates and then the lead speaks to the individual associates and conveys the message to them.

Communication with employees

22. The respondent uses an app to simplify access to essential information and resources for day-to-day work. This offers active employees (employees still employed by the business) access to manage work schedules, view salary details, update personal information, request leave and facilitate communication between employees and the human resources department or management. Where an

employee leaves Amazon or their employment is terminated, this fact must be manually inputted into the system by HR so that there could be a delay between the end of employment and the ability to continue to access the app.

Claimant's COVID and other absences

23. Absence reporting is dealt with by a separate regional leave and absence team. Employees call the leave and absence team to report that they are off sick and the leave and absence team deal with coding of the sickness absence. Any other queries from the employees about their sickness absence are sent to their manager and the local HR team. COVID-19 related absences are coded differently from other sickness absence so they are not dealt with through the Amazon's absence policy and employees are paid in full.
24. From 9 October 2021 to 21 October 2021 the claimant was unfit for work due to back pain (see fit note dated 14 October 2021 at page 395).
25. On 23 October 2021 (page 421) the claimant informed the respondent she had developed COVID. On 6 November 2021 the claimant tested positive for COVID (page 400) and was required to self- isolate to 16 November 2021 (page 401 and page 412)
26. On 7 November 2021 (page 421) the claimant contacted the respondent to say she had a fever and cough again. The claimant stated that *"yesterday she called the attendees line and talked to a Mr so I want to report an error in the e-mail you sent me that is I told them that I have symptoms waiting for your update thank you and best regards".*The respondent (page 424) informed the claimant that she had previously tested positive for COVID and had completed her isolation period and as the claimant had not returned to work she had to now follow the normal absence policy and provide a fit note.
27. On 8 November 2021 (page 427) the claimant informed the respondent that she had developed new, more aggressive symptoms and based on this she had another positive PCR test. She stated that she had been informed by NHS that she was still contagious and should stay in isolation. On 8 November (page 430) the respondent stated it expected the claimant to return to work on 20 November and that she would be paid for up to 10 days due to this absence. In another email of the same date (page 429) the claimant was informed that the respondent required a self-attestation form. A further email from the respondent on 8 November page 431 stated that as per the recent COVID policy change the respondent required a test result evidence or test scheduled proof along with the attestation form to update the attendance system with relevant sick coding. On 9 November (page 432) the respondent informed the claimant that she needed to provide a GP fit note for continuation of isolation and if the claimant felt unwell and not fit for work the claimant needed to follow the standard health policy for reporting her absence. On 9 November 2021 (page 437) the claimant stated *"following conversations with you via email and in which you claim that it my option that I am not coming to work. If it is safety for you that I will immediately resume work activities since the fit note requested by you is impossible for me to obtain I ask you to confirm me when I can return."*. On 9 November 2021 page 438 the respondent emailed the claimant stating *"I can confirm that we have updated your schedule and you are due to return to work Tuesday 10 November 2021".* Ms. Petrescu who gave this instruction,

stated in evidence that she had not seen the self-isolation note at page 412 or the trail of emails which indicated that the NHS had advised the claimant to self isolate. The Tribunal found Ms. Petrescu to be a credible witness and accepted her evidence.

28. The policy of Amazon at the relevant time was that colleagues should self-isolate in accordance with the NHS guidance but after the isolation period and if remaining unwell the employee had to provide a sick note to be paid in accordance with the sick pay policy. In her evidence Ms. Petrescu stated (and the Tribunal accepted) that there was no policy at Amazon to make employees to attend work who had to self-isolate. If she had seen the note at page 412, she would have advised the claimant to stay at home and not to return to work until after the isolation period; she had not seen the note at the time.

Email to Jeff Bezos

29. On 11 November 2021 the claimant contacted the respondent's Head Office in America see page 444 to advise that she was being forced to work when she had covid and should have been self-isolating. The claimant stated:
"On 23 October I developed some COVID symptoms and later I tested positive and I respected the isolation. On November 6th I develop new more aggressive symptoms and immediately contacted NHS119 at 1:35 PM and they sent me for a PCR test immediately as a result of the conversation I had with them I had to continue my isolation period until November 10 because they told me that the arrival of the result can last up to 72 hours. On the following day 7 November 2021 at 12:17 PM I received the test result with a positive result. Later I called 119 NHS from agreements made the previous day. Practically in the telephone conversation they had 14 minutes 36 being confused because the HR staff were exposing the situation differently I asked the NHS for information support they explained to me that I have to isolate myself for a further period of 10 days because I have developed new symptoms and they invited me to explain to my employer that it is not a continuation of the first period but a venue. Based on the development of the new symptoms. Here my hell began because despite feeling very bad I had to try I tried to keep patience with the HR staff who constantly told me that for them I am no longer contagious and it is my free choice not to resume work activities as shown as also shown by the e-mail that I have attached them as proof. Now practically I'm in a critical situation because the NHS requires me to respect the law and carry out my isolation because it is contagious and they have advised me to claim the unsafe act from the HSE health and safety executive ACAS. The fact that HR personnel do not respect the workplace safety policy by crime and they inadvertently pose damage to the company I have not reported a competent authorities because I firmly believe that the company is not at fault for illicit actions. Precisely for this reason i place all my trust in you that you will take the right measures to resolve this violation of the rules to protect the physical integrity of employees as the holder of a position of guarantee that derives in the 1st place from article 208 seven of the civil code. Furthermore i kindly ask you to allow me to continue my period of isolation imposed by NHS the competent health authorities in united kingdom."

30. The claimant's email was forwarded to Gary Norton, the Manager of BHX1 site. On 13 November 2021 (p.480) Gary Norton informed the claimant to continue to isolate and informed her the local team would pick this up on Monday 15 November. He said he was not sure why the claimant had not emailed him as opposed to copy him in so he could deal with locally.
31. Mr. Norton passed the email to Miss. Reeves, local HR Business partner to look into. On 15 November 2022 Leanne Reeves, HR Business Partner spoke to the claimant (page 446). In their telephone conversation, Miss. Reeves explained that there appeared to be a mix up between the leave of absence team and the local HR AP team around worsening of symptoms. The leave of absence team was not aware of this when they communicated the call to the HR AP team. They did not know there was a change in symptoms until they spoke to the claimant. The only time the respondent extended OHC (category of COVID coding for absence and fully paid absence) is if COVID symptoms have changed or worsened otherwise the respondent asks for a fit note to cover continuation of isolation. The claimant was assured that isolation had now been coded OHC full pay including the continuation of isolation based around the information provided. Miss. Reeves said there was no excuse but offered an explanation as to human error. She stated that an e-mail was being sent to the team to clarify. The claimant was asked by Miss Reeves to provide names of who she spoke to in the local HR team but the claimant was unable to give the information due to her feeling unwell. The claimant asked Miss. Reeves if this would go against her in terms of formal meetings for absence. Miss Reeves assured the claimant that COVID related absences are excused from the health policy and no formal meeting would be sought upon returning relating to this particular absence.
32. Ms. Reeves noted that the claimant wanted an independent investigator, so Gary Norton, site manager passed the investigation on 22 November 2021 to Miss. Sherrie Osborne, Senior HR Business Partner at the respondent's BHX4 distribution centre to consider the claimant's complaint following the claimant re-escalating the matter (page 687-692). The claimant was unaware that Seattle had not appointed Miss. Osborne.
33. On 28 November 2021 page 456 to 457 the claimant had a meeting via Chime with Sherrie Osborne at Head Office. There was a dispute of evidence as to whether the meeting was recorded; the claimant said that it was. Miss. Osborne said it was not; Amazon's practice was not to record meetings but a note is kept. The Tribunal on the balance of probabilities preferred the evidence of Miss. Osborne that the chime meeting was not recorded in accordance with the general practice at Amazon.
34. The claimant informed Miss. Osborne she was unhappy that HR had called her and told her she could return but she could not confirm who had told her to come back to work. The claimant described this as a critical issue for the company that HR had called her during her isolation. Miss. Osborne stated that guidance was changing on isolation from the government and she had initially reported she was still unwell and it would cause confusion on coding. The claimant stated that she did not feel safe due to this experience. Miss. Osborne explained that many safety measures had been put in place. The claimant contends that she advised Ms. Osborne that other people were being forced to come into work whilst they had COVID. There was a dispute of evidence about this. Miss. Osborne in her witness

statement at paragraph 3.13 stated that at no time during this particular meeting did the claimant tell her that any other associates were required to return to work whilst testing positive for COVID or show her any documentary evidence that this was the case. The Tribunal preferred the evidence of Ms. Osborne taking into account the notes of the meeting at page 456 to 457 that make no mention of the claimant raising a concern that others were being forced to return to work with COVID.

35. Under cross examination, the claimant disputed the respondent's evidence that she became upset at the meeting. The Tribunal did not accept the claimant's evidence because as a response to the claimant becoming upset, she was referred to OH and informed about EAP on that date. Further it is noted, and the claimant accepted, that she stated at page 437 that she felt unsafe because of her experience.
36. On 29 November 2021 (page 462) the claimant requested a formal meeting. Miss. Osborne arranged this to take place with Mr. McRae on 13 December 2021.

OH Report

37. The OH report dated 4 Dec 2021 (p.463) stated that the claimant was fit for work with short term or temporary adjustments until 5 February 2022. It was noted there were some concerns about the claimant's psychological well-being and the claimant was advised to contact the mental health practitioner. The OH specialist advised that the claimant be exempted from overtime and to work only her contracted hours of 40 hours for the next 8 weeks to manage fatigue. It was also suggested that her targets be reduced for the next 8 weeks to manage chest pains by allowing her to pace herself. The OH specialist stated that the claimant was unlikely to be covered by the Equality Act.

Absence procedure

38. Unauthorised absences occur when an associate does not have a valid reason for an absence. No call and no shows occur when employees do not notify an absence at all. An investigation meeting takes place as a fact-finding meeting and no formal invitation letter is issued and associates were not invited to bring a companion as there is no potential disciplinary outcome. The outcome can be that no further action is taken or that the matter will proceed to a disciplinary hearing for disciplinary action if there is evidence of misconduct.
39. Informal health reviews are triggered when an associate has three different instances of sickness related absence (or over 80 hours for full time employees) of sickness in a six month period. The informal health reviews involve a 1 to 1 informal meeting between the associate and a manager to discuss the reason for the absences and any contributing factors. The manager explores any support needed to ensure the associate can attend work. The outcome may be that no further action will be taken or to proceed to a formal health review meeting. A formal health review meeting takes place with HR in attendance where the number frequency and level of absences are discussed along with reasons for absences, the likelihood of further absence and any reasonable support that can be provided to enable the associate to attend work. The associate receives a formal invitation letter and is

entitled to be accompanied by a colleague or trade union representative the outcome may be that no further action will be taken or that Amazon will issue a letter of concern regarding absences.

Meeting 11/12 December 2024

40. On the evening of Saturday 11 December 2021, Ms. Petrescu, HR Partner, undertook a review of outstanding meetings. She noted that the claimant was due an informal health review and separately an investigation both of which could be progressed that day. The informal health review was triggered by a period of absence from back pain from 9 October 2021 to 21 October 2021 (see page 395). The claimant had had a formal health review scheduled for the following Monday in relation to a separate absence and the ill health review needed to take place before that so the absence covered by the ill health review could be included in and considered at the formal health review meeting. The separate investigation was in connection with an unauthorised absence on 3rd September 2021 when the claimant reported she could not attend work due to a family emergency but had provided no details (see page 685).
41. Associates are required to provide details at the time of reporting the absence such as the nature of the emergency and to what family member it related. The investigation meeting was to understand the reason for the absence and ascertain whether further action was needed. Miss. Petrescu planned to undertake the investigation meeting with the claimant along with Mr. Demeny (who was assisting HR at that time) and the claimant was invited to attend a meeting at 8:50pm.
42. Upon Miss. Petrescu entering the meeting on 12 December 2021 (see page 475) the claimant started crying stating that she did not want to be investigated without having somebody she trusts next to her, and she had been told by doctors that she is predisposed to heart attacks and needs to calm down. The claimant stated she had been gravely wronged by Amazon and she did not want Miss. Petrescu to participate during the meeting as she had been part of the wrongdoing. Although the claimant did not provide any details Miss. Petrescu apologised to her and assured the claimant, she would support her. There was a formal health review booked for the following Monday and an investigation would occur on Tuesday and that she could be accompanied by another colleague. Miss. Petrescu said there was no formal invitation to a fact-finding meeting and the claimant agreed that the meeting could proceed.
43. At about 2.30 am the claimant attended at the HRAP desk again upset and crying stating that Miss. Petrescu had lied; was trying to trick her; was doing something illegal to her. Miss.Petrescu tried to intervene to understand what had happened, repeating that the claimant would not be investigated until Tuesday and tried to explain to the claimant the different types of meeting. The claimant started screaming that she needed an ambulance and was afraid of Miss. Petrescu and could not be left alone at the HRAP desk without a manager. Miss. Petrescu called first aid and the claimant was taken to a meeting room. The claimant did not wish to engage with HR stating that she was having a meeting with more important people. The claimant's partner was contacted and waited for the claimant in the car park. The claimant refused to leave until the ambulance arrived. The claimant

actually left at 5.05a.m. with her partner. The events are recorded in a contemporaneous email dated 12 December 2021 at page 477.

44. There is a dispute of evidence as to whether Ms Petrescu told the claimant she was at risk or she was going to be investigated for gross misconduct. On the balance of probabilities, the Tribunal found that Miss Petrescu did not say this to the claimant; the purpose of the meeting was simply to understand the reason for the claimant's unauthorised absence. There was also a dispute of evidence as to whether Miss. Petrescu said to the claimant *"don't tell me what regulations I have to follow"*. The Tribunal did not find, on the balance of probabilities, that this was said either by Ms. Petrescu and accepted the evidence of Miss. Petrescu. The Tribunal found Miss. Petrescu to be a conscientious professional who remained so throughout the meeting and who had made a contemporaneous note of the discussion at page 476 to 477 after the interaction with the claimant. The note does not contain any of the serious allegations made by the claimant.
45. The claimant also made a very serious allegation against Miss. Petrescu that she had said to the claimant on 11 December 2021 so to mock the claimant every time she walked past staring *"you see that you urinated on by piss".* This allegation was not mentioned in a grievance or any complaint by the claimant (complaint dated 12 December 2021 timed at 16.51; see page 480). The claimant was keen to complain and escalate matters of concern; although the claimant complained about Ms. Petrescu in her email to Mr. Norton, the Tribunal noted it is in very general terms. The Tribunal was confident that if Ms. Petrescu had actually said these words to the claimant, the claimant would have complained directly and specifically about it. Furthermore, Miss. Petrescu was a conscientious professional and the Tribunal finds it unlikely that Miss. Petrescu would say anything like this. The Tribunal also refers to its paragraph on credibility below.

Claimant's email 12 December

46. The claimant sent an email to Gary Norton site manager on 12 December 2021 (p. 480). In the email the claimant requested Mr. Norton to intervene and immediately stop abusive actions, psychological harassment and marginalisation of health claims perpetrated against her. The claimant said she had expressed her disagreement to participate in any type of meeting because she was in a sensitive state of high stress as shown by her medical report. She said she had a panic attack when she met Miss. Petrescu; she was put through an investigation meeting although she expressed disagreement.

Meeting 13 December 2021

47. On 13 December 2021 (page 482- 491) the claimant met Ms. Osborne and Tim McRae. The claimant was accompanied by Mr. Pirvu. The claimant was invited by Mr. McRae to set out the background of her complaint. The claimant explained that following a second positive COVID test she spoke to the attendance line who told her to come back to work as her isolation had been completed and to get a GP sick note. She had sent the isolation note and the HR team requested a fit note so she was coded no show as opposed to sick. The claimant could not recall who she spoke to, but she was required to attend work despite having an isolation note.

The claimant told Ms. Osborne she wanted Amazon to enforce the rules on Health and Safety in the workplace. The claimant enquired why Amazon had not tested others when aware of her COVID and they had an obligation to report to RIDDOR. The claimant said another person had been required to attend work (Page 486) but she could not say the name. She said she had proof they are so scared in this situation and to respect the private rules. The claimant was given an opportunity to set out her concerns. There was a dispute of evidence as to whether the claimant (as she contended) showed the respondent documentary evidence that it was not just her who was being required to work whilst they had COVID. The respondent disputed this.

48. On the balance of probabilities, the Tribunal preferred the evidence of Miss Osborne which was corroborated by Mr McRae that the claimant did not during the grievance hearing show any documents about another individual or give a name of any other person similarly affected by alleged pressure to breach COVID-19 isolation rules. The claimant did allege there was another person in a similar situation to her but did not name them.
49. The claimant stated that she was unwell and Mr. McRae stated that she should go home if unwell and it would be treated as sick leave under the policy.
50. Following this meeting Miss. Osborne undertook an investigation. She was unable to investigate the other individual alleged to have been required to attend work with COVID because the claimant had not provided a name. Miss. Osborne sought to meet with the claimant to provide a response to the grievance on 3 January 2022; 15 or 17 January 2022. The claimant was unable to attend, and the claimant was sent the findings of the grievance via a letter.

Welfare Meeting

51. On 14 December 2021 Mr. Sanvir Khunkhun, operations manager, had a welfare meeting with the claimant (page 492) to discuss the occupational health report dated 4 December 2021 (page 463). Adjustments to be made to the claimant's working practices included an exemption from working overtime for 8 weeks; 2 additional 15 minutes breaks per shift and the ability to take other breaks if needed and a reduction in performance to be taken into account. Mr. Khunkhun informed the claimant that these temporary adjustments would be made and he would inform other managers. The Tribunal accepted that Mr. Khunkhun in accordance with his evidence, did tell other managers about the temporary adjustments in place. The claimant was happy with this support and signed the welfare meeting note on that day. The claimant wished to "*to make a small change to the statement that is I get support from Amazon except the HR team because they have caused me further damage by exposing me to a situation of deception and aggravating my state of health"* (see page 593).

Grievance Outcome Letter

52. The grievance outcome letter dated 17 January 2022 (page 516-517) informed the claimant that she had been provided with the incorrect return to work date by two members of the human resources associate partners team requesting her to return on 10 November instead of 16 November 2021. The letter stated that when

reporting a continuation of isolation, the advice to request a fit note and code as sick pay in line with current company process was correct. Miss. Osborne found that the changes in information provided by the claimant's continued absence may have had an impact on the advice being given by the local HR team and this part of the grievance was upheld.

53. In respect of the claimant's concerns about this issue happening on other occasions making the workplace unsafe, Miss Osborne found that there was no evidence of a widespread issue at the site. Mr. McRae had explained that the COVID pandemic was a complex situation with government guidance changing frequently. Amazon had produced a large number of robust policies working closely with local health authorities to ensure the safety of all working staff at Amazon sites. Miss Osborne found there was no case to answer. Miss. Osborne stated that retraining on current government and Amazon guidance on self isolation for employees would be provided.

Further OH report

54. The claimant was referred by the respondent for another occupational health assessment in 25 January 2022 (page 540 to 544). The OH report stated the claimant was temporarily unfit for work and likely to return to work on 30 January 2022 if she tests negative to COVID virus. Further the OH specialist stated he considered the claimant's symptoms relating to long COVID and depression to be a grey area regarding the disability component of the Equality Act 2010; "good practise would be to consider the requirements potentially under this act with these in my opinion primarily relating to operational capability to accommodate associated ongoing sickness absence in the future".

Process of extending contract

55. Mr. Yates, HR Business Partner gave detailed evidence about the manner in which extensions to contracts are dealt with at Amazon. He is responsible for communicating the extension of contracts which could be up to 2000 contracts in any one period. His evidence, which the Tribunal accepted, was that Amazon take a structured approach in respect of extending contracts of employment. The labour planning team first review the labour plan requirements. Once the number of extensions has been agreed and published in the labour plan, the task then comes to local HR to review the current fixed term contract (FTC) populations for potential extensions or releases. The HR team use a network calibration tool that sorts associates into categories based on a number of factors including productivity performance quality score and attendance. The tool does not have any direct manager input and is generated solely based on system based metrics. Amazon has a maximum tenure for fixed term contracts to be employed capped at 18 months from the date of their last hire date. The Amazon FTC procedure does not extend contracts of associates who were calibrated as an N rated associate in terms of performance to benchmark curve. Once these associates were removed, the labour planning team assesses the headcount requirement against eligible fixed term contract employees. The fixed term contract extension process is driven

by labour planning and headcount considerations. Multiple factors feed into the calibration of associate ratings which determine which FTC associates will be extended to fulfil headcount requirements the network calibration tool does not have any direct manager input and is generated solely based on metrics.

Extension of the claimant's fixed term contract

56. There was a significant dispute of evidence as to whether the claimant's contract was extended to January 2023. The claimant's evidence is that her contract was extended in December 2021 until January 2023 by her manager Mr. Sanvir Khunkhun. The claimant relied upon a chime message (page 594) which stated "*thank you are really good news, I really appreciate that you extend my contract bless you*.." To which, Sanvir replies "you're welcome". The full trail of the chime messages between the claimant and her manager were not disclosed by the claimant. Chime messages automatically delete after a short period of time. Above the message relied upon by the claimant, there is a partial message that states *"quote unpaid please"*. The full content of the messages between the claimant and her manager have not been disclosed by the claimant and the email relied upon by the claimant did not refer to the period of time the employment contract had been extended to nor whether it actually refers to an employment contract extension. The claimant gave evidence that she had gone into the office on or about 22 December 2021 and been handed a computer by Mr. Khunkhun and actually digitally signed off an extension to her contract to 2023. The respondent disputed this; Mr. Sanvir Khunkhun disputed that he had ever extended the claimant's contract and Mr. Yates in his evidence had described the process (set out above); Mr. Khunkhun had no authority to extend any employee's contract; that is the remit of Mr. Yates's role.
57. On the balance of probabilities, the Tribunal determined that it was unlikely that Mr. Sanvir Khunkhun extended the claimant's contract until January 2023 or at all and rejected the claimant's evidence. The respondent's policy was to provide fixed term workers with a maximum of 18 months contract only after the last extension. To have extended the claimant's contract to January 2023 would have been in excess of this period. Further the claimant had no copy of the alleged signed contract for the alleged further period until 2023. She had checked her personal yahoo account and the alleged extended contract was not available. The documentary evidence indicated that the claimant received an automated email on dates 13 January page 512; 17 January 2022 page 518 and 21 January 2022 page 539 which indicated that the respondent had proposed that the claimant's contract be extended until 19 March 2022. The respondent had no record of any contractual extension to 2023 (see page 252 paragraph 1.9.) Mr. Khunkhun has no authority to extend an employee's contract of employment that is the remit of Mr. Yates' team.
58. In cross examination of Mr. Yates, the claimant suggested she had not accepted the extension to March 2022 because she did not sign the contract. Mr. Yates accepted that the claimant had not signed it and his department did not check whether an employee had signed the extension usually because there are such a large amount of employees contracts extended at one time. He said usually employees were happy with an extension to a contract and unless they did not

want it, they did not contact the respondent. He further noted that the claimant had continued to attend work and provided fit notes to her employer.

59. The Tribunal found on the balance of probabilities that on 13 January 2022 the respondent extended the claimant's contract to 19 March 2022 (page 512) because the respondent was experiencing an increase in the volume of trade across its business and there was a need to retain fixed term employees. At the time there was a business requirement to extend all fixed term contracts that had not yet reached 18 months service due to an increase in volume. On the balance of probabilities, the Tribunal finds that some fixed workers at the respondent's BHX1 site were extended to March 2022 due to business need but all terminated by March 2022. The FTC extension process was driven by labour planning and headcount considerations a multiple factors feed into the collaboration of associate ratings which determine which FTC associates will be extended to fulfil headcount requirements. The network calibration tool does not have any direct manager input and is generated solely based on a system based metrics. The contract could not have extended to January 2023 because that would be in breach of the 18 months cut off limit for FTC's. The claimant's evidence about the contract extension was rejected.

Further COVID /sickness absence

60. The claimant had further sickness absence from work. The claimant contracted COVID again in January 2022. By (retrospective) fit note dated 5 January 2022 the claimant was unfit for work for the period 13 December 2021 to 16 January 2022 by reason of a mixed anxiety and depressive disorder (page 511). The claimant had a COVID absence from 18 January 2022 to 28 January 2022 (see page 529). A fit note dated 27 January 2022 for a period 15 January 2022 to 12 February 2022 for mixed anxiety and depressive disorder; page 545. A fit note dated 16 February 2022 for the period 12 February 2022 to 15 March 2022 for mixed anxiety and depressive disorder; page 548.

Stress Risk Assessment

61. Mr. Sanvir Khunkhun also undertook a 13 page stress risk assessment (page 613-625) on either 6 or 7 February 2022. The claimant's evidence was that she did not see this at the time, but the Tribunal rejected her evidence and found that it had been completed in that period along with a discussion with her manager, noting the comments included in the assessment were on the balance of probabilities likely to have been made by the claimant. The claimant had suggested that she did not want to work through her breaks and wanted to relax. The claimant was actually having 2 additional breaks of 15 minutes following the recommendations of the OH. The claimant said this was theroretical and did not happen in practice. The Tribunal determined that Mr. Khunkhun suggested at page 615 the claimant be given an additional break to support her medication and he also encouraged the claimant to work on an indirect role as part of the rota but the claimant sometimes declined depending on how she felt on the day (see page 616). It was also noted that the claimant was not able to complete the indirect role on 6 February 2022 due to the side effect from medication and it would have increased her stress (see page 617).

The claimant did not raise any concerns about bullying or harassment but stated a case was being reviewed by HR (page 620). It is further noted that the claimant stated that there were no workplace relationship conflicts within the team (p.620)

Monitoring of performance

62. The respondent monitors employees' productivity via the ADAPT system which tracks the performance of employees via items processed. When the claimant returned to work in 2022, she raised concerns about idle time. Mr. Khunkhun informed colleagues not to hold "seek to understand meetings" with the claimant about any excess idle time as it made her very anxious.
63. Employees are set targets via the labour planning each week. Rates applied are different within each process i.e. picking, stowing, receiving which have different rates as the processes are slightly different. Employees are measured against the target rate and dependent on their tenure learning curve and are expected to achieve 70 to 100% of that rate. The claimant alleged she was disciplined and received a first written warning for failing to meet productivity targets. There was no documentary evidence of any disciplinary action taken against the claimant to support this nor did the claimant's manager, Mr. Khunkhun have any knowledge about this. On the balance of probabilities in the absence of any documentary evidence and taking into account that the claimant's manager had no knowledge about such disciplinary action, the Tribunal determined that the claimant was not so disciplined.

Termination of the claimant's contract

64. The claimant's contract was due to end on 19 March 2022. The claimant had been absent from work from 12 February 2022 and returned on 17 March 2022. Mr. Khunkhun made 6 attempts to contact her (three calls on two occasions) to discuss her contract but was unable to reach her. The claimant stated that the calls were received under spam so she had not answered. When the claimant returned to work Mr. Khunkhun extended the claimant's contract to 26 March 2022 to give her one weeks' notice. Mr. Khunkhun gave the termination letter to the claimant with an end date of 26 March 2022. The claimant was shown as active on the system until after her last shift, the night shift on 26 March 2022, and she would not have been locked out until her last shift ended. She was locked out of AtoZ app once the termination of her contract had been processed. There may well have been a delay between the termination date 26 March 2022 when the claimant could actually access the app due to the requirement that the termination be manually entered on the system. This did not mean that she remained an employee of the respondent after 26 March 2022.

Submissions

65. Both parties provided detailed written submissions and were given one hour each to make additional oral submissions. The respondent provided Both parties had also provided the Tribunal with a timeline of COVID rules.

66. The respondent submitted there was a lack of clarity in the claimant's case, and it had taken some time to clarify precisely her claims. Further that the claimant's witness statement did not address all the factual allegations in the list of issues and had sought to make further allegations which were not included in the list of issues. The claimants witness statement did not deal with the detrimental treatment she alleges from others by reason of her public interest disclosures. During the hearing the claimant cross examined on matters which had not been set out in writing including in her witness statement and she added she had been pulled up by Mr Singh for her productivity. In terms of credibility the respondents submitted that the claimant made allegations without any knowledge or evidence to support them and had made serious allegations of detrimental treatment as a result of public interest disclosures where she accepted the individuals had no knowledge of her public interest disclosures. In so far that the claimant sought to draw an inference that parties knew about her public interest disclosures, the Tribunal was invited to consider all the evidence which contradicted that inference. The respondent relied upon the claimant's own evidence that she treated the process around making a public interest disclosure confidential and she did not tell anybody about her disclosures. The claimant had alleged that her manager Mr Khunkhun had blocked access to her chime video platform as a result of a public interest disclosure. She accepted in cross examination there was no evidence that Mr. Khunkhun was responsible for blocking chime access. In respect of the automatic unfair dismissal claim there was no documentary evidence that the claimant's contract was extended in December 2021 to January 2023. The claimant contended that she had been removed from the critical role list. However, on her own evidence when asked to perform the critical role on 12th December she said she wasn't well enough and also in February she felt too unwell to do it. The claimant further alleged that she had been subject to a written warning on the 9th of February but there was no evidence whatsoever to show that she had any such disciplinary warning. The respondents submitted that the claimant's evidence was unreliable in a number of respects. In relation to Mr. Pirvu he gave evidence about it matters when he did not have an IT role in the respondent. He was not well placed to inform the tribunal as to how the app functioned. His evidence about the events of the grievance meeting on the 13th of December were inconsistent with Miss Osborne's notes. He alleged that Mr McRae had said the respondent was friendly with authorities but that did not capture what was actually said in the meeting. The respondent invited the Tribunal to treat Mr. Pirvu's evidence with caution. He had no contemporaneous evidence to support his allegations. In respect of Mr Zoltan Demeny he was not challenged because his evidence was not inconsistent with the respondents witness, Miss. Petrescu (see page 475). Further Mr. Raducana, did not attend the Tribunal to be cross examined so the weight to be attached to his evidence must be limited. In contrast the respondents' witnesses gave their evidence clearly and in a honest way, answering questions conscientiously. The Tribunal only heard from Miss. Petrescu, Mr Singh and Mr Khunkhun who are current employees about detriment. The claimant did not mention other individuals in her witness statement and in respect of the treatment of detriments, her witness statement was cursory. The claimant's allegation about being allocated to the pet food area contrary to the Stow board (paragraph 48) was limited to when Mr Khunkhun was present. In the absence of any evidence that Mr. Khunkhun was

even aware of the public interest disclosure, there was no room for any inference being drawn against the respondent.

67. The respondents submitted the reality of the case was that there was an inadvertent error due to a misunderstanding of the claimant's position. Miss. Petrescu stated that she had not seen the previous communications or the isolation note referring to the claimant to stay at home until the 16th of November. If she had she done so she stated she would not have advised the return date when she did. The misunderstanding by this respondent was corrected in a matter of days. The general manager said on the 13 of November that the claimant should continue isolating. Miss Reeves on the 15 of November stated that the claimant should stay at home. The claimant was not satisfied and wished to make a formal complaint. The respondent appointed individuals to review the situation comprehensively and partially upheld her complaint. There was no retaliation against the claimant for raising complaints. To the contrary, the respondent actually extended the claimant's contract for a further two months to March 2022. The claimant had not provided any evidence of detriment by reason of public interest disclosures or that the individuals even knew about public interest disclosures. In regards to the claimants disability discrimination complaint, it is accepted the claimant was disabled by reason of depression from 13 December 2021. The respondent ensured that two occupational health reports and assessments took place. The claimant attended work following December on very few occasions and attended by her own volition on the 22 of February when signed off work. There was no credible suggestion that she was treated less favourably because of her depression nor was she disadvantaged; there was no evidence of a written warning.
68. In respect of the written contract extension the respondent relied on the oral evidence of Mr. Yates as to how extensions take place. It was submitted that the claimant merely relies on a message at page 593 that her contract was extended but the message had no context. The claimant suggests at page 447 that the respondent has fabricated a document; this was a practise of the claimant; when any document was against her, she alleged it was fabricated by the respondent. The claimant has also misquoted evidence given to the Tribunal including the evidence of Mr Singh at page 9 of the claimant's submission where she says that Mr. Singh said in evidence that he had the same expectations for the claimant as other non-disabled employees but the respondent says that was in fact not said in evidence. There was no evidence that the claimant was disabled on the 11th and 12th of December. The allegations do not commence until the 13 of December; this is beside the point in respect of indirect discrimination, the claimant has failed to make out her case.
69. The claimant submitted that her contract was extended in December she signed to accept it. The claimant submitted that she had not signed the extension sent to her in January 2022. The claimant relied upon the fact that the timetable page 568 to 708 envisaged that she would be still at work. The extension for two months required her to consent & she did not consent. She already had a contract extending her employment until 2023. She felt she had been cheated. She disputed that Mr. Khunkhun had tried to contact her in March 2022. The claimant made a serious disclosure about COVID and a further complaint was escalated. The claimant submitted she did not receive the notes of the 28th of November so she did not have an opportunity to contest them she does not believe they are accurate

at the second meeting on the 13th of December 2021 “I said I wasn't an isolated case and I showed the correspondence I did delete the name of the person”. She asked Mr McRae to make a report about this he'd said there friendly with the authorities. The claimant said she reasonably believed that she made a public interest disclosure in the public interest; she had to make about 30 phone calls or emails with the respondent despite having an isolation note that she shouldn't have to go back to work. The claimant relied on Mr. Pirvu’s evidence who she said was a reliable witness and had been living with her throughout the period and knew what she had gone through.

Credibility

70. The Tribunal found the claimant’s evidence to be inconsistent with contemporaneous documentation and that she tended to make allegations in the absence of any evidence. At the commencement of the hearing, the claimant confirmed that the list of issues at page 218 were the agreed list of issues. In the course of cross examination, when it was identified that the claimant had made complaints about Mr. Thomas in her witness statement which had not been relied upon in the list of issues, the claimant said there was a different list of issues; the Tribunal did not accept this. The claimant alleged that her employment contract was extended to January 2023 by her manager; she had no copy of the extension of her contract on either the Amazon or her personal email account where she accepted documents could be sent by Amazon. Her manager had no remit to extend her employment contract and there was a set process for extension of contracts which Mr. Yates explained comprehensively; the claimant’s allegation was not credible. The claimant alleged detrimental treatment by a number of individuals which she did not evidence in her witness statement. Under cross examination, the claimant accepted she had not told any of them about her protected interest disclosures and kept the process confidential. The claimant was unable to explain in cross examination why she said they had treated her by reason of her protected interest disclosures in the manner she alleged. The Tribunal took into account the claimant was a disabled person and litigant in person who’s first language was not English but even taking those matters into account the Tribunal determined that the very serious and specific allegations made against Ms. Petrescu was a significant omission in the contemporaneous documentation. The claimant accepted that as a result of her conversation she was referred to OH and the EAP but contended that she had not got upset at the meeting on 12 December 2021. The claimant’s evidence was not credible.
71. The claimant called Mr. Pirvu who was assisted by a Romanian interpreter. He has an outstanding claim against the respondent. The Tribunal did not find him to be a credible witness. He purported to give evidence about matters not within his expertise such as the working of the IT system of Amazon and appeared to be seeking to argue his own case before the Tribunal rather than assisting the Tribunal to find facts concerning the claimant’s case. His evidence about the meeting on 13 December 2021 with the claimant and Ms. Osborne contradicted the written document of the meeting corroborated also by the oral evidence of Ms. Osborne and Mr. McRae.

72. The claimant also called Mr. Zoltan Demeny. His evidence was unchallenged by the respondent. He did not provide any evidence to corroborate the claimant's evidence about her alleged poor treatment on 11/12 December 2021 by Ms. Petrescu despite being present for some of the time.
73. For the respondent, Miss. Petrescu was a credible witness who was genuine and proud of her position in the respondent. She was also very articulate in English and the Tribunal found the very serious allegations made by the claimant against Miss. Petrescu to be incredible; first the allegation of stating *"you see that you urinated on..by piss"* was not something that the Tribunal found Ms. Petrescu would say; she was articulate in English; the words of the allegation did not make sense and Ms. Petrescu was professional and highly unlikely to make such remarks. Further it was suggested that Miss. Petrescu was behaving like this every time she walked past the claimant; the Tribunal was satisfied on the balance of probabilities that Ms. Petrescu would not behave like this. Further the Tribunal rejected the allegations against Ms. Petrescu that she would say the claimant was at risk; going to be investigated for gross misconduct and don't tell me what regulations I have to follow; the allegations were inconsistent with the professionalism of Miss. Petrescu. Further she informed the Tribunal that the claimant's allegations against her really knocked her confidence as she was new into the position of three months and she therefore sought to avoid the claimant thereafter which the Tribunal found was genuine and credible.
74. The Tribunal found Mr. Singh, Mr. Khunkhun, Miss. Osborne; Mr. Yates; Mr. McRae and Miss. Reeves to be credible and honest witnesses.

The Law
Section 47 B protected disclosures

(1) only subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure"

103A Protected disclosure/automatic dismissal

An employee who is dismissed shall be regarded for the purposes of this part as unfairly dismissed if the reason (or if more than one the principle reason) for the dismissal is that the employee made a protected disclosure.

Qualifying disclosures; under section 43B(1) ERA breaks down into five elements see **Williams v Brown UKEAT/0044/19**

(1) has there been a disclosure of information?
(2) Did the claimant believe that the disclosure was made in the public interest?
(3) If so was that belief reasonably held?
(4) Did the claimant believe that the disclosure tends to show one or more of the matters listed s.43B (1)(a)-(f)?
(5) If so, was that belief reasonably held?

75. A disclosure must have sufficient factual content and specificity; **Kilraine v London Borough of Wandsworth (2018) EWCA Civ 1436.**

It is crucial for the tribunal to identify the information disclosed by the worker which is said to amount to a qualifying disclosure *"this is crucial because section 43B one requires the tribunal to go on to consider whether the claimant's belief about that information fell within the section and if the conclusion is that there was a qualifying disclosure, whether the disclosure of that information was a or the reason for the treatment complained of"* see **Twist DX v Armes UKEAT/0030/20/JOJ**

76. The question of what a worker reasonably believes involves two elements; first whether the worker subjectively believed at the time of the disclosure that the disclosure was in the public interest and second if so whether that belief was objectively reasonable; see **Chesterton Global v Nurmohamed (2018) ICR 731**. In relation to the public interest the question is whether the worker reasonably believed that making this disclosure was in the public interest as opposed to whether the worker reasonably believed they were talking about a topic which in general terms was in the public interest; **Carr v Blomberg LLP 2022 EAT 49.**

77. In the case of **International Petroleum v Osipov (UKEAT/0229/16),** it was held that section 47 B will be infringed if the protected disclosure materially influenced in the sense of being more than a trivial influence the employer's treatment of the whistleblower see **Fecitt v NHS Manchester 2012 I RLR 64** an approach that mirrors the approach adopted an unlawful discrimination cases and reinforces the public interest in ensuring that unlawful discrimination considerations are not tolerated and should play no part whatsoever in employers treatment of employees and workers. The words on the ground that were expressly equated with the phrase by reason that in **Najagaran v London Regional transport 1999 ICR 877**. So the question for a tribunal is whether the protected disclosure was consciously or unconsciously a more than trivial reason or ground in the mind of the putative victimiser for the impugned treatment. In respect of causation in dismissal cases

In deciding the reason or principal reason for dismissal the Court of Appeal stated in **Abernethy v Mott 1974 ICR 323 at 330** refer to *"the set of facts known to the employer, or it may be of beliefs held by him which cause him to dismiss the employee".*

78. Burden of proof

Section 47B cases

The correct approach to the burden of proof and inference drawn in section 47B of ERA summarised by the EAT in Osipov at paragraph 115 namely

(a) the burden of proof lies on a claimant to show that a ground or reason that is more than trivial for detrimental treatment to which he or she is subjected is the protected disclosure he or she made;
(b) by virtue of section 48 (2) of ERA 1996 the employer or other respondent must be prepared to show why the detrimental treatment was done. If they do not do so an inference may be drawn against them; see **London Borough of Harrow v Knight** at paragraph 20;
(c) however as with inferences drawn in any discrimination case inferences drawn by tribunals in protective disclosure cases must be justified by the facts as found.

in a case where the tribunal can find no evidence to indicate the grounds on which the respondents subjected to the claimant to attachment it is not required to find that the reason was that contended by the claimant or accordingly it does not follow that in such circumstances the claim necessarily succeeds; **Ibekwe v Sussex Partnership Foundation Trust EAT/0072/14 applying Kuzel v Roche Products Limited (2008) IRLR 530**

2. Where an employee lacks 2 years qualifying service to bring an ordinary unfair dismissal case, the claimant bears the burden of showing on the balance of probabilities that the reason or principal reason for dismissals that she made protected disclosures in a claim under section 103 a of the ERA; see **Ross v Eddie Stobart Limited EAT/0068/13**

78.1 Disability

Section 6 of the Equality Act provides definition of disabilities as follows

(1) a person P has a disability if
(a) he has a physical or mental impairment and
(b) impairment has a substantial a long term adverse effect on P's ability to carry out normal day-to-day activities.

Section 212 (1) of the Equality Act provides that substantial means more than minor or trivial

schedule one paragraph 1(i) provides that the effect of an impairment is long term if it is lasted for at least 12 months is likely to last for at least 12 months or is likely to last the rest of the life of the person affected.

Paragraph 2 (ii) or schedule provides that if an impairment ceases to have a substantial adverse effect it is to be treated as continuing to have that effect if that effect is likely to recur. In that context likely has been determined by the House of Lords as “could well happen” rather than “more likely than not”. **(SCA packaging Limited v Boyle 2009 UKHL 37.**

Paragraph 5 of schedule one provides an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to correct it and but for that it would be likely to have that effect.

79. The Tribunal must take into account statutory guidance on the definition of disability (2011) which stresses that it is important to consider the things that a person cannot do or can only do with difficulty (B9). This is not offset by things that the person can do which was confirmed in **Aderemei v London & South Eastern Railway Limited 2013 ICR 391**. Day-to-day activities are things people do on a regular basis such as shopping reading watching TV getting washed and dressed preparing food walking travelling and social activities this includes work related relates activities such as interacting with colleagues using a computer driving keeping to a timetable C guidance D2/D7)

80. Direct disability discrimination

Section 13 of the Equality Act 2010 ("EQA") defines direct discrimination as less favourable treatment when compared with others because of a protected characteristic.

Section 13 (1) of the Equality Act 2010 provides that.

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

81. It is necessary to establish if the Respondent has treated the Claimant less favourably than it treated or would treat others and the difference in treatment is because of the protected characteristic, namely disability.

82. The Tribunal is to make a comparison with an actual or hypothetical comparator in not materially different circumstances (section 23 EQA 2010). In respect of a hypothetical comparator, it is possible to use the evidence of comparators in materially different circumstances to construct a hypothetical comparator and determine how such a hypothetical individual would be treated. However, a statutory comparator as per s. 23 Equality Act 2010 must be a comparator in the same position in all material respects of the victim save that he, or she, is not a member of the protected class (Shamoon **v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285**). *The Tribunal must decide why the claimant was treated as he was.* ***Nagarajan v London Regional Transport [1999] IRLR 572*** *identifies this as the "crucial question".*

83. As to whether the alleged less favourable treatment was because of disability the key focus for the tribunal is on the reason why the claimant was treated less favourably and whether it was the disability. This usually requires a consideration of the mental processes, whether conscious or subconscious, of the alleged discriminator.

Islington London Borough Council v Ladele [2009] ICR 387 - in relation to discrimination claims, the tribunal has to determine the reason why the claimant was treated as he was and if the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.

Direct evidence of discrimination is rare, and tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-stage test which is set out in **Igen Ltd v Wong [2005] IRLR 285, CA**. In some cases it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the Igen test, (**Brown v Croydon London Borough Council [2007] ICR 90)**.

Section 136 of the Equality Act 2010 provides that where the tribunal finds facts from which it could conclude that unlawful discrimination has taken place the burden of proof shifts to the respondent to prove that the action was non discriminatory. This operates in two stages first the claimant must prove on the balance of probabilities facts from which the tribunal may infer discrimination has taken place second and only if the claimant does so the respondent must prove on

the balance of probabilities that the treatment was in no sense whatsoever because of the protected characteristic of disability.

Indirect discrimination

Pursuant to section 19 (1) a person A discriminates against another B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

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

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

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

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

(d) A cannot show it to be a proportionate means of achieving a legitimate aim. Provision, criterion or practice

84. For the Claimant to succeed in a claim he must show that there was a "provision criterion or practice" (PCP) which was applied to him. The disadvantage must apply not only to the claimant but also to the group with whom he shares the protected characteristic i.e. **Greeks (Gray v Mulberry Co (Design) Ltd [2020] ICR 715**. A PCP should be construed widely and the EHRC Code indicates that it can include "one-off" decisions and actions. In the case of **Ishola v Transport for London [2020] EWCA Civ 112** Simler LJ stated, '*In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. ...In context and having regard to the function and purpose of the PCP in the Equality Act 2010, all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that "practice" here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP of "practice" to have been applied to anyone else in fact. Something may be a practice or done "in practice" if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one. ...in the case of a one-off decision in an individual case where there is nothing to indicate that the decision would apply in future, it seems to me the position is different. It is in that sense that Langstaff J referred to "practice" as having something of an element of repetition about it.*'

85. The employer must have actually applied the alleged PCP to the claimant at the material time that is at the time of the alleged disadvantage. The effect of section 19(2)(c) is that the claimant must actually be disadvantaged in the manner alleged that is they have experienced or would experience the disadvantage allegedly caused by the application of the PCP. In a claim for indirect discrimination the burden lies with the claimant to establish the first second and third elements of the test in section 19 (2) only then does it fall to the respondent to justify the PCP see the case of **Dziedziak v Future electronics limited UKEAT/0270/11**.

86. Thus, the PCP must apply to people who do not share the protected characteristic(s) or an indication that it will in future if a hypothetical case arises. It has to put people who share the same protected characteristic(s) as the claimant at a particular disadvantage.

87. The Tribunal considers the impact on people within a defined pool for comparison.

88. The pool should always contain workers affected by the PCP in question, **Essop v Home Office (2017) UKSC 27** and tests the particular discrimination complained of, **Grundy V British Airways [2007] EWCA Civ 1020**.The PCP must put or would put individuals who possess the same disability as the Claimant at a particular disadvantage when compared with individuals who do not possess the disability; (**Booth v Delstar International [2023] EAT 22**).

89. Where the proportionality test is engaged, the treatment must be both a way of achieving the legitimate aim and a reasonable necessary means of doing so (**Homer v Chief Constable of West Yorkshire [2012] UKSC 15**). The reasonable needs of the employer should be balanced against the discriminatory effect of the treatment, and consideration should be given to whether there is an alternative (less discriminatory) way for the employer to achieve their aim.

Conclusions

Disclosures

90. The claimant relied upon three alleged disclosures. In respect of the first disclosure, an email dated 11 November 2021 (page 444-5), the Tribunal found that the claimant had disclosed to her employer information that she was being required to attend work whilst testing positively for COVID. In the email dated 11 November 2021 the claimant had stated *"on 23 October I developed some COVID symptoms and later I tested positive and I respected the isolation. On November 6th I developed new more aggressive symptoms and immediately contacted NHS119 at 1:35 PM and they sent me for a PCR test immediately and as a result of the conversation I had with them I had to continue my isolation period until November 10 because they told me that the arrival of the results can last up to 72 hours. On the following day 7/11/2021 at 12:17 PM I received the test result with a positive result and later I called 119 NHS from agreements made the previous day. Practically in the telephone conversation they had (14 minutes 36 being confused because the HR staff were exposing the situation differently I asked the NHS for information support) they explained to me that I have to isolate myself for a further period of 10 days because I have developed new symptoms and they invited me to explain to my employer but it is not a continuation of the first period but of a knew. Based on the development of the new symptoms…. The HR staff who constantly told me that for them I am no longer contagious and it is my free choice not to resume work activities as also shown by the e-mail that I have attached them as proof. Now practically I'm in a critical situation because the NHS requires me to respect the law and carry out my isolation because it is contagious and they have advised me to claim the unsafe fact from the HSE (health and safety executive) ACAS. The fact that HR personnel do not respect the workplace safety policy by encouraging the COVID mass contagion because it exposes them to a positive COVID subject is a crime and they had inadvertently pose damage to the company."*The claimant conveyed information (a disclosure) with sufficient factual

content and specificity that there was a breach of the COVID regulations; namely the need for the claimant to self-isolate in accordance with the isolation note and she disclosed that she had been given a return to work date which was in conflict with her legal duty to self-isolate. The claimant relied upon the NHS information/advice which had stipulated she needed to self-isolate. In the circumstances, the Tribunal concluded that the claimant relying upon the NHS isolation note and advice received from NHS 111 had a reasonable belief and that such a belief was reasonable that the respondent requiring her to return to work prior to the expiry of the isolation note there was a breach of a legal obligation to comply with COVID rules and that the health or safety of any individual had been was being or was likely to be endangered. The BHX1 site had over one thousand permanent workers on site and about 3,200 FTC on site at its peak during COVID. The claimant stated the work included handling of numerous items. The Tribunal determined that the claimant reasonably believed at the time of sending the email that the disclosure was made in the public interest by reason of the fact that the claimant's attendance at work whilst she had COVID could impact a significant workforce and have significant impact on any external contacts (family and friends or other members of the public) they may meet and such a belief was objectively reasonable (in accordance with **Chesterton Global v Nurmohamed**). The Tribunal determined that that the claimant made a qualifying disclosure pursuant to section 43B (1) (b) and this was protected by reason of it being sent to her employer, Jeff Bezos, Chief Officer of the respondent's business.

91. In respect of the second disclosure namely during a meeting on 28 November 2021 with Sherrie Osborne, the Tribunal found on the balance of probabilities that the claimant did not make a qualifying disclosure. The claimant's case is that during a meeting with Sherrie Osborne on 28 November 2021 the claimant advised Miss. Osborne that other people were being forced to come into work whilst they had COVID. The Tribunal took into account the evidence of the claimant and Miss. Osborne. In Miss. Osborne's witness statement (paragraph 3.13) she stated that at no time during this particular meeting did the claimant tell her that any other associates were required to return to work whilst testing positive for COVID or show her any documentary evidence that this was the case. The Tribunal preferred the evidence of Ms. Osborne taking into account the notes of the meeting at page 456 to 457 that make no mention of the claimant raising a concern that others were being forced to return to work with COVID. The claimant stated she did not receive these notes until later so had no time to challenge them, but the claimant had no notes of the meeting herself and the Tribunal found Miss. Osborne to be a credible witness. In the circumstances, the Tribunal determined that the claimant did not make a qualifying disclosure as she alleges. This allegation fails.
92. In respect of the third disclosure, the pleaded allegation is that the claimant showed Miss. Osborne documentary evidence that it was not just she who was being required to work whilst they had COVID and told Ms. Osborne she wanted Amazon to enforce the rules on Health and Safety in the workplace. The Tribunal took into account the claimant's witness evidence, Mr. Pirvu's evidence (paragraph 12); and the evidence of Ms. Osborne and Mr. McRae. The Tribunal noted that in the claimant's witness statement at paragraph 9 the claimant had stated "*during the meeting I emphasised the Amazon's actions posed a direct public health threat and constituted an epidemic crime under UK law including violations of a the Health and Safety at Work Act 1974 Amazon failed to ensure the health and safety of its employees during the pandemic b the control of substances hazardous to health*

regulations 2002 by allowing employees to work while positive for COVID-19, Amazon breach regulations designed to minimise exposure to hazardous substances see the public health control of disease at 1984 under the Health Protection coronavirus regulations 2020 Amazon's actions contravene laws empowering health authorities to prevent the spread of infectious diseases. I highlighted the case of my colleague Raducanu Florentin who despite NHS guidelines for isolation was encouraged by Amazon to come to work thus potentially endangering other employees. This example underscored that my case was not isolated illustrating a systematic issue with Amazon BHX1 where employees were repeatedly encouraged to disregard health guidelines". This differed from the pleaded allegation. The Tribunal noted that the claimant was a litigant in person and that English was not her first language.

93. The Tribunal found that the claimant did say in effect at the meeting another colleague was being asked to come into work when they had COVID; she did not actually name the colleague (accepted by the claimant and Mr. Pirvu) nor the Tribunal finds did she show the respondent documentary evidence about this (in accordance with the evidence of Miss. Osborne and Mr. McRae which the Tribunal accepts). The claimant stated she had a Chime instant communication messaging system message confirming this but no evidence was actually provided by the claimant to this effect and she said that she could not tell the name of the person.
94. The Tribunal determined that the information provided by the claimant in the meeting namely that she was not the only person and a colleague was being required to attend work with COVID was only an allegation. The Tribunal takes into account the guidance provided in **Kilraine v London Borough of Wandsworth** that there should be no rigid dichotomy in respect of "information" and "allegations" because sometimes a statement which can be characterised as an allegation will also constitute information and amount to a qualifying disclosure. However at paragraph 32 of the Court of Appeal's judgement it refers to "You are not complying with health and safety requirements" and describes it as being so general and devoid of specific factual content that it could not be said to fall within the language of section 43B(1) so as to constitute a qualifying disclosure. The Tribunal found that what the claimant actually said to the respondent at the meeting on the 13 of December fell into this general category and contained no more specific factual content. The Tribunal determines that this was a mere allegation and the claimant did not disclose information to constitute a qualifying disclosure. This allegation fails.

Automatic unfair dismissal s.103A

95. The Tribunal having found that the claimant made one public interest disclosure in an email dated 11 November 2021 went on to consider the reason or principal for the dismissal of the claimant and whether it was because the claimant made a protected disclosure.
96. There is no dispute between the parties that when the claimant commenced her employment with the respondent in May 2021 her fixed term contract was due to expire on 22 January 2022 (see page 371 and 373). The Tribunal determined that the claimant's contract of employment was not extended to January 2023 by her manager Mr. Khunkhun. The Tribunal has set out its findings of facts fully above. In summary, the Tribunal found that it preferred the evidence of the claimant's manager, Mr. Khunkhun that he did not extend the claimant's contract taken

together with the total lack of evidence of any contractual extension to January 2023 either in the possession of the claimant or the respondent. Further such a contractual extension would be contrary to the respondent's practice of not extending an employee's contracts beyond 18 months from their last assignment. In addition, the evidence of Mr. Yates who was responsible for sending out extensions to contracts and how the system generated extensions and the fact that it was not in Mr. Khunkhun's gift to extend any employee's contract of employment. The Tribunal found that the message relied upon by the claimant at page 594 did not establish that Mr. Khunkhun had extended the claimant's contract; the disclosure in respect of this message was incomplete; there was no message trail and there was no context to establish the message was a response to an extension of the claimant's employment contract.

97. The claimant also relied upon an email from the absence reporting team dated 26 March 2022 stating it expected the claimant to return to work on 27 March 2022 (see page 600) and screenshots from the A to Z app showing the claimant's shift timetable beyond March 2022. The Tribunal determined that this did not establish that the claimant's contract was extended beyond March 2022 in the light of the evidence of the respondent that the A to Z app ceases for an employee only after a manual processing of an employee's termination on the system and there can be a delay between termination and the manual processing.
98. Instead, the Tribunal determined that the claimant's contract was extended in accordance with the evidence of Mr. Yates namely to 19 March 2022 on 13 January 2022 (see page 512). The extension of the claimant's contract was part of a blanket set of extensions of all FTC associates at the site who had not hit 18 months tenure. At the time the claimant was absent from work and the claimant was sent the extension via the app and reminded to sign her agreement to the extension on 13,17 and 21 January 2021 (see pages 513,518 and 539).
99. The claimant argued before the Tribunal that the alleged extension in March 2022 was not legal because she had not signed the document to extend her contract. The Tribunal determined that the claimant did not sign the extension because there was no evidence before the Tribunal that the claimant ever did sign the extension. Mr. Yates' evidence to the Tribunal is that there are blanket extensions to contracts for up to 2000 employees at any given time. The respondent does not check whether employees accept the contracts or sign them but in practice employees rarely reject the extension. The respondent assumes employees are content with the extension even though unsigned unless the employees specifically raise an objection and state they wish to leave the respondent's employment.
100. Under cross examination, the claimant accepted that she had not raised any objection to the extension of her contract to March 2022. Further the claimant continued to act as if she was an employee of the respondent following 13 January 2022 (the initial expiry date of her contract of employment) when she continued to send in sick notes to the respondent.
101. Significantly the respondent extended the claimant's contract following her making a protected interest disclosure on 11 November 2021. The Tribunal found that the claimant's contract was not extended to January 2023 but to March 2022. It was so extended following the claimant making a protected interest disclosure. The reason or principal reason for the claimant's dismissal was not the fact that the claimant made a protected interest disclosure on 11 November 2021. The claimant's contract was terminated on 19 March 2022 with one weeks' notice in accordance with the contractual extension to that date and by expiry of its term.

Mr. Khunkhun's evidence which was accepted by the Tribunal is that the claimant's contract was due to end on 19 March 2022; on the claimant's return to work, Mr. Khunkhun extended the contract to 26 March to give the claimant's one week notice.

Detrimental Treatment

102. The claimant made a number of pleaded allegations against individual colleagues she said subjected her to detrimental treatment namely Connor, the transfer line manager; Mr. Emin, Leader Stow; Manjeet Singh; Arun Dees; Sanvir Khunkhun; Ranescu Cornelia Step up Lead Stow; Catalin Marica Step up Lead Stow; and Ms. Petrescu. The Tribunal only heard from the employees presently employed by the respondent namely Mr. Singh, Mr. Khunkhun and Ms. Petrescu. The Tribunal as set out above found all three witnesses credible and honest. In respect of the claimant's allegations about poor treatment by her managers/leads, the Tribunal did not find this credible. The Tribunal also took into account that following the welfare meeting on 14 December 2021 the claimant in a message at page 593 stated "*I will make a small change to your statement that is I get support from Amazon except the HR team because they have caused me further damaged by exposing me to a situation of deception and aggravating my state of health in rest I'm agree with all."* There was no indication here that the claimant believed that the managers/leads were treating her badly. Further in the stress risk assessment dated 6/7 February 2022 at pages 613-624 the claimant was asked about whether there was any bullying or harassment, she stated "no but another case being reviewed with HR" (the Tribunal found that this was not concerning her managers or leads but her grievance about HR) and further whether there were any issues concerning workplace relationship conflicts within the team, to which the claimant, answered "no". These comments by the claimant indicated up to 6/7 February 2022 that she had no issues with her managers/leads.

103. Furthermore, the claimant did not complain about her detrimental treatment by any of the named individuals to the respondent or her manager, Mr. Khunkhun in the manner she alleges or at all. The Tribunal noted that the claimant was a person who did complain and escalated her concerns where she felt unsatisfied by the respondent's response. Evidentially it was significant that she had failed to raise her concerns formally and the Tribunal determined (taken together with all the other factual material) that on the balance of probabilities that the alleged detrimental treatment as alleged was unlikely to have occurred.

104. The claimant's evidence to the Tribunal is that she kept her public interest disclosures confidential, and she engaged confidentially with the grievance process. She did not discuss her protected interest disclosures with her colleagues or managers/leads named as responsible for the alleged detrimental treatment or the fact that she was engaging in the grievance process. The Tribunal found that the claimant could not establish on the balance of probabilities any knowledge of the named individuals as to her public interest disclosures. Mr. Khunkhun, Mr. Singh and Ms. Petrescu gave unchallenged evidence that they were unaware that the claimant made any protected interest disclosures. The Tribunal accepted their evidence as credible.

105. The Tribunal determined that being removed from the critical role list could be seen as a detriment or disadvantage because the work was regarded as being more complex than general stowing duties and could evidence a level of

competence necessary for advancement at Amazon. This allegation was directed at Mr. Khunkhun for the periods 20 November 2021 to 11 December 2021 and 11 December 2021 to 26 March 2022. The Tribunal found there was one occasion when the claimant came off the critical role list at her own request. This was consistent with the claimant's own evidence to the Tribunal there were occasions on which she was asked to perform a critical role but was unable to do so because she didn't feel well. On such example was on 12 of December 2021. Under cross examination the claimant had said this was the only time she was selected and the only time she declined to perform the critical role. However, the stress risk assessment completed by the respondent indicated another occasion when the claimant declined to take the role when selected on 6 February 2022 see page 617. The Tribunal reached the conclusion that the claimant's evidence was not credible, and she was not removed from the list of people to whom these tasks were available by Mr. Khunkhun; the claimant remained on the list; she determined she did not want to do the work when offered and Mr. Khunkhun did not remove the claimant from the critical role nor was she marginalised in this regard.

106. Further in respect of the claimant's pleaded allegation was that she was marginalised as a result of making a disclosure for the period of 20 November 2021 to 11 December 2021 by Connor, the transfer line manager; Dzhivelek Emin (login Dzhivel) leader of Stow; Manjeet Singh (F/F line manager); Arun Dees and Sanvir Khunkhun (claimant's line manager) by sending her to different areas from the area known as the buffer the Tribunal did not find this allegation well founded. The claimant's pleaded case is that all of the managers sent her to different areas from the area known as the buffer so that she was separated from the rest of the collective and had to work alone. The respondent's evidence, which was accepted by the Tribunal, is that part of being an FC associate is to be flexible so that an FC associate can be moved about the warehouse where operational requirements demand. The evidence of Mr. Khunkhun and Mr Singh was that employees were moved around different areas to those allocated on the stow board and it was usual to satisfy business work demand. The claimant's witness evidence about the pleaded allegation amounted to Mr. Khunkhun allocating her to the pet food department and not assigning her critical role responsibilities. She did not detail the alleged pleaded detrimental treatment against others. The Tribunal determined that if the claimant was sent to other areas deliberately and made to work away from the rest of the team and working alone; this would amount to a detriment namely a disadvantage. However, the Tribunal concluded on the balance of probabilities that this did not occur. The Tribunal concluded if the claimant was sent to different areas from the area known as the buffer it was likely to be by reason of workflow demand. Further she would not have been separated from team groups; employees are moved in groups and she did not have to work alone.

107. On the balance of probabilities the Tribunal did not find that the claimant was sent deliberately to work alone to different areas from the area allocated on the stow board where was she was separated from the rest of the collective and had to work alone by any of the managers; she was required to work flexibly along with other FC associates; she was likely to have been moved in groups. Further there was no causative link between her protected interest disclosure and any such alleged detrimental treatment because the claimant did not establish on the evidence that any of the named individuals were aware of her public interest disclosures.

108. The claimant's pleaded allegation is that for the period 11 December 2021 to 26 March 2022 she wanted to apply for the step up lead opportunity and Mr. Khunkhun told her that no you are not able to lead. Mr. Khunkhun disputed this allegation. Mr. Khunkhun's evidence which the Tribunal found credible denied he had said this, and the Tribunal accepted his evidence that this opportunity was advertised around the site, and it was for the claimant to apply for if she wished to. This was not something which Mr. Khunkhun was responsible for. This allegation fails.

109. The claimant's pleaded allegation is that from 11 December 2021 to 26 March 2021 Mr. Khunkhun blocked her access to the chime video platform. The claimant clarified this allegation under cross examination that the access to the App was blocked and as her manager Mr. Khunkhun must be responsible for this. The Tribunal rejected the claimant's evidence, preferring the evidence of her manager. Mr Khunkhun did not have the technical ability to deny anyone's access to the chime app and confirmed under cross examination he had no idea how to block someone's access to chime. This allegation fails.

110. The claimant's pleaded allegation was that during the period 11 December 2021 to 26 March 2022 she could not participate in a project organised by sight BX5 by the BHX1 site that was to act as critical role and work in Derby for a limited period of time; the claimant's case was that Mr. Khunkhun always said no to this. In his evidence, Mr. Khunkhun stated he had no recollection of this particular opportunity. The Tribunal accepted his evidence that this was outside his role as a manager and if the claimant had wanted to apply to it, she could have done so. This allegation fails.

111. The claimant's pleaded allegation is that her manager Sanvir Khunkhun did not put her name on the list for the apprenticeship opportunity. Mr. Khunkhun disputed the claimant's allegation. The Tribunal accepted his evidence, that the respondent advertises all such opportunities in Chime and around the site and that it was not his role to put the claimant forward for such an opportunity nor did he have any authority to decide who should be accepted. This allegation fails.

112. The claimant's pleaded allegation is that she was mocked by Cristina Petrescu on 11 December 2021 and then every time she walked past, Miss Petrescu stared and whispered *"you see that you urinated on by piss"*. The Tribunal has dealt with this allegation in detail above and rejects it. The Tribunal repeats that this specific allegation was not mentioned in a grievance or any complaint by the claimant (complaint dated 12 December 2021 timed at 16.51; see page 480). The claimant was keen to complain and escalate matters of concern; although the claimant implicitly complained about Ms. Petrescu in her email to Mr. Norton, the Tribunal noted it is in very general terms. The Tribunal was confident that if Ms. Petrescu had actually said these words to the claimant, the claimant would have complained directly and specifically about it. Furthermore, Miss. Petrescu was a conscientious professional who denied saying these words and the Tribunal finds it unlikely that Miss. Petrescu would say anything like this. This allegation fails.

113. The claimant's pleaded allegation is that she was mocked by Dzhivelek Emin from 20 November 2021. He scolded her for low productivity told her that she was incapable and that she should be ashamed of wearing her Amazon badge. He told the claimant he must move her because people suffering from cancer at Amazon work more efficiently than the claimant. Initially this happened approximately once every two weeks but it intensified to around once per day from 12 December 2021. On 26 March 2022 Mr. Emin called the claimants to a meeting

when he was particularly aggressive towards her. The claimant did not provide any detail in her witness statement about this allegation. Mr. Emin is no longer employed by the respondent and was not called as a witness. Mr Khunkhun's evidence in response to questions from the Judge, stated that the first time he became aware of the claimant's complaints about Mr Emin was in the course of the Tribunal proceedings and she had not raised the serious concerns with him at the time. In the context that the claimant was somebody who was willing to make complaints, the Tribunal found it was evidentially significant that she had failed to raise these matters with her manager. The Tribunal also took into account that during the welfare meeting on 14 December 2021 and the risk assessment dated 6/7th of February 2022 the claimant did not raise any of these concerns against her leads or managers. On the balance of probabilities, the Tribunal rejected the claimant's evidence and found that these matters did not occur. The allegation fails.

114. The claimant's pleaded allegation was on 11 December 2021 she was involved in an abusive disciplinary meeting with Christina Petrescu. She says Ms. Petrescu wanted to punish her for not turning up to work when she had cavid. At the meeting Ms. Petrescu told the claimant she was at risk and was going to be investigated for gross misconduct. When the claimant tried to tell her that she should follow the disciplinary regulations referring to the fact that she had not had a formal invitation to the meeting was not accompanied Miss Petrescu shouted at her and don't said don't tell me what regulations I have to follow the claimant suffered a panic attack for 30 to 40 minutes during this meeting. The Tribunal has already dealt with this allegation above. The Tribunal repeats that it rejected the claimant's evidence. On the balance of probabilities, the Tribunal found that Miss Petrescu did not say this to the claimant; the purpose of the meeting was simply to understand the reason for the claimant's unauthorised absence. There was also a dispute of evidence as to whether Miss. Petrescu said to the claimant *"don't tell me what regulations I have to follow"*. The Tribunal did not find, on the balance of probabilities, that this was said either by Ms. Petrescu and accepted the evidence of Miss. Petrescu. The Tribunal found Miss. Petrescu to be a conscientious professional who remained so throughout the meeting and who had made a contemporaneous note of the discussion at page 476 to 477 after the interaction with the claimant. The note does not contain any of the serious allegations made by the claimant. This allegation fails.

Disability Discrimination

115. There is no dispute that the claimant met the definition of disability within the meaning of section 6 of the Equality Act 2010 from 13 December 2021. The claimant alleges she met the definition on 11 December 2021 but makes no specific discrimination allegations on 11 or 12 December 2021. Pursuant to the overriding objective the Tribunal did not consider that it was necessary to determine this, but the claimant has requested that we do so.

116. The claimant has the burden of establishing that she met the definition set out in section 6 of the Equality Act 2010 at the material time.

117. The claimant referred in her witness statement at paragraph 20 that she was subject to ongoing abusive deceptive and arbitrary discrimination behaviours during the night shift of the 11 and 12 December and stated this treatment culminated in a severe panic attack. "The intense stress of these events precipitated acute anxiety and depression conditions that were medically

documented during her subsequent hospitalisation at New cross hospital in Wolverhampton". The claimant also referred to paragraph 23 of her witness statement to "being hospitalised on the 12th of December and that medical examinations confirmed that she had developed mixed depression and anxiety". However, The Tribunal also took into account that the OH assessment dated 4 December 2021 page 463 refers to the claimant at page 464 that she needed mental health support since the COVID. OH advised the claimant to contact the respondent's mental health practitioner. In her evidence when asked to perform the critical role on 12 December the claimant said she was not well enough. The discharge letter from the hospital dated 12 December 2021 page 479 described the claimant as having *chest pain and tingling sensation*.

118. On the basis of this evidence the Tribunal was not satisfied that the claimant had a mental impairment of depression and/or anxiety on 11 and 12 December 2021. The Tribunal was not satisfied on the limited information that any impairment had a substantial adverse effect on her ability to carry out day-to-day activities or in the absence of medical treatment including medication or take other measures to treat or correct the impairment, any alleged impairment had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures. There was no evidence before the Tribunal to consider whether the effects of the impairment long term namely last at least 12 months or whether they likely to last at least 12 months; if not were they likely to recur in the sense that it may well happen (see **Boyle v SCA Packaging 2009 UKHL 37**). In the circumstances the Tribunal concluded that the claimant was disabled from 13 December 2021 and not before.

Direct disability discrimination

The respondent instructed her to attend work on 17 December 2021 while she was unfit and signed off by her doctor. The claimant says her line manager Sanvir Khunkhun forced her to attend work saying that if she took time off she would have to take it as annual leave.

119. There is a dispute of evidence as to whether Mr Khunkhun behaved in the manner alleged. The Tribunal has already expressed its findings on the credibility of the witnesses; it preferred the evidence of Mr Khunkhun and did not find the allegation made out. The claimant had attended hospital on 12 December 2021 page 479 and the discharge sheet refers to the claimant's condition as "*chest pain/tingling sensation*". The claimant was not diagnosed with depression at that appointment. The claimant was actually not signed off work until she obtained a retrospective fit note on 5 January 2022 which signed her off retrospectively for the period 13 December 2021 to 16 January 2022 due to "mixed anxiety and depressive disorder". The claimant was on sickness absence from 19 December 2021 and returned on 17 January 2022.

120. In the circumstances the claimant's allegation does not make sense; the claimant had not been actually signed off by her doctor on 17 December 2021 and Mr. Khunkhun could not therefore have required her to attend work contrary to her fit note. The Tribunal did not find this allegation made out on the facts. This allegation fails.

The respondent ignored the claimant's risk assessment carried out on 14 December 2021 by instructing her to return on 17 December.

121. There was no risk assessment carried out on 14 December 2021 as already found by the Tribunal. A welfare chat between the claimant's manager, Mr. Khunkhun, and the claimant took place see page 492 whilst the claimant was absent from work. The claimant's OH assessment which had been carried out on 4 December 2021 at page 463 was discussed. The Tribunal found in accordance with his evidence, that Mr. Khunkhun confirmed the adjustments recommended in the OH assessment would be put into place namely the claimant was fit to work with temporary adjustments. The claimant was not instructed by Mr. Khunkhun to return to work on 17 December. The Tribunal does not find this allegation made out on the facts. The allegation fails.

The respondent took into account the claimants idle time when she was sick but still attending work between 17 December and 19th of March 2022 inclusive.

122. The claimant was absent from work from 20 December 2021 returning to work on 17 January 2022 (see page 562). The claimant was absent from work due to COVID until 30 January. The claimant then worked 5 further shifts and went absent on sick leave from 7 February until 19 March 2022. During the hearing, the claimant's manager, Mr. Khunkhun informed the Tribunal he had told his team including managers on other shifts that they should not have any discussions with the claimant about excess idle time. He also stated reassured the claimant that shift leaders were aware of the temporary adjustments in place. The claimant did not express any dissatisfaction with the level of support she was receiving from managers. This is clear from the risk assessment dated 6/7 February 2022 at page 613. The claimant did not address the issue of idle time in her witness statement before the Tribunal. The Tribunal did not find this allegation made out on the facts. The Tribunal contrary to the claimant's criticisms of her treatment; the respondent took the claimant's health seriously; ensuring that she was made aware of EAP; referring her promptly to OH; meeting with the claimant to discuss her welfare; conducting a risk assessment and making temporary adjustments. This allegation fails.

Indirect disability discrimination

Were all FC associates subject to productivity targets requiring them to put away 2000 items per night ? Was this PCP applies to claimant while she was signed off sick by her doctor but still attending work (the claimant says she could not comply with the targets because of her depression)

123. There was a dispute of evidence between the claimant and her manager Mr Khunkhun. Mr Khunkhun informed the Tribunal (and the Tribunal accepted his evidence) that although the respondent did have productivity targets the targets were not 2000 items per night (see his witness statement to paragraph 66; "this would not be possible"). The respondent sets targets through labour planning every week and the targets are different within each process. The Tribunal also notes that in the welfare meeting dated 14 December 2021 the respondent had accepted the Occupational Health recommendations for temporary adjustments to be put in place to take account of the fact that the claimant may not be able to meet her productivity targets (see page 492). The evidence of Mr. Khunkhun was that these were to be followed and he informed other managers/leads.

124. In the circumstances the Tribunal does not find that the respondent applied the pleaded the PCP nor as the claimant alleged whilst the claimant was signed off sick but still working. The claimant was not required by the respondent to attend work whilst she was signed off sick.
The PCP substantially disadvantage the claimant in that she was subjected to disciplinary proceedings for not being able to comply with the targets and she received a first written warning on 9 February 2022 for failing to maintain levels of productivity.

125. There was no evidence before the Tribunal that the claimant had received any disciplinary action or a written warning in February 2022. The claimant's manager, Mr Khunkhun explained he was unaware of any disciplinary action taken against the claimant. The Tribunal finds if the claimant had been subjected to disciplinary action, it is most likely that her manager would have been aware of it. Mr Singh's evidence to the Tribunal was that under the respondent's process a written warning would have triggered a meeting with HR and no such meeting occurred. The claimant did not provide any documentary evidence to the Tribunal that she received a first written warning. The Tribunal does not find that the claimant was subject to disciplinary proceedings and therefore not substantially disadvantaged as alleged. She said it was Mr. Singh.

126. In the circumstances the Tribunal dismissed the claim for indirect discrimination.

127. In all the circumstances, all of the claimant's claims are not well founded and are all dismissed.

Employment Judge Wedderspoon

11 June 2024