EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112333/2021 (V)

Open Preliminary Hearing held at Aberdeen (via CVP) on 30 November 2022

Employment Judge Tinnion

Mr Donald Geddes	**Claimant** **In Person**
Calmac Ferries Ltd	**Respondent** **Represented by** **Ms Mackie,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. During the relevant period of time (11 February 2021 - 6 August 2021), the Claimant was not disabled under s.6 of the Equality Act 2010 because of an adjustment disorder impairment.

2. The Claimant's application to amend his ET1 Claim Form to add a claim that on 22 November 2019 the Respondent breached a duty to make reasonable adjustments under ss.20-21 of the Equality Act 2010 by failing to provide him with advanced rotas ideally monthly to address disadvantages arising from his epilepsy impairment is denied.

3. The Claimant has leave to amend his ET1 Claim Form to include an averment and claim that in the period 11 February 2021 - 6 August 2021 the Respondent breached a duty to make a reasonable adjustment for him by failing to conduct a risk assessment concerning his eyesight/partial vision.

REASONS

1. The Respondent employed the Claimant as an Outport Clerk from 16 October 2009 until 6 August 2021 when he was summarily dismissed for alleged gross misconduct.

2. It is not in dispute that in 2001 the Claimant was involved in a serious car accident as a result of which he suffered numerous injuries, including a head injury.

3. The Claimant's case is that (1) his head injury caused him to sufferan adjustment disorder (2) because of his adjustment disorder, he is unable to process his emotions calmly, and can get easily upset and angry (3) his adjustment disorder has led to outbursts at work, including his use of foul language on 28 April 2021 and 6 May 2021 (4) the Respondent failed to support him by eg referring him to Occupational Health. The Claimant accepts that during the relevant period, he took no medication for this adjustment disorder.

4. By an ET1 on 5 November 2021, the Claimant presented numerous claims against the Respondent including claims of disability discrimination under the Equality Act 2010 **(EqA).** The Respondent presented an ET3 resisting all claims. Before the 30 November 2022 OPH, three PHCMs had been held on 13 January 2022, 4 April 2022, and 3 August 2022 respectively, the relevant outcome of which (so far as the issue of disability is concerned) was as follows:

    a. visual impairment - Respondent accepted Claimant had this impairment during relevant period, accepted it was a disability under s.6 of EqA;

    b. epilepsy - Respondent accepted Claimant had this impairment during relevant period, accepted it was a disability under s.6 of EqA;

    c. Claimant did <u>not</u> rely upon following impairments as disabilities under s.6 of EqA for purposes of his ET claims - (1) hyperthyroidism (2) growth hormone deficiency (3) diabetes insipidus (4) cognitive impairment;

d. the parties continued to dispute whether the Claimant had an adjustment disorder impairment constituting a disability under s.6 of EqA.

5. An OPH was listed on 30 November 2022 to determine the following issues:

"Whether the Claimant's adjustment disorder is a disability in terms of s.6 of the Equality Act 2020.

Whether the Claimant should be allowed to amend his claim to include averments relating to:

1) Inadequate notice of rotas

2) *Between 11th February 2021 and date of dismissal no risk assessment was carried out on his eyesight."*

6. At the OPH the Claimant gave oral evidence. The Respondent did not call any witnesses. The parties relied on a Disability Bundle of c.146 pages [DB/1-146] including a brief impact statement [DB/74], and a 67-page Supplementary Bundle [SB/1-67]. Both parties made oral closing submissions.

Relevant law

7. Section 6 of EqA provides:

> 6 Disability
>
> (1) A person (P) has a disability if --
>
> (a) P has a physical or mental impairment, and
>
> (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities
>
> (2) A reference to a disabled person is a reference to a person who has a disability.
>
> (3) In relation to the protected characteristic of disability—
>
> (a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability
>
> (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.
>
> (4) The Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section --
>
> (a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability and
>
> (b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability
>
> (5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1)
>
> (5) Schedule 1 (disability supplementary provision) has effect

8. The effect of an impairment is "long-term" if it (a) has lasted for at least 12 months (b) is likely to last at least 12 months or (c) is likely to last for the rest of the life of the person affected. EqA 2010, Schedule 1, para. 2(1).

9. The date to assess whether an impairment constitutes a disability is the date of the discriminatory act. Cruickshank v VAW Motorcase Ltd [2002] ICR 729, EAT. That is also the correct date to determine whether the impairment has had, or is likely to have, a long-term effect. All Answers Ltd v W [2021] EWCA Civ. 606.

10. "Substantial" means more than minor or trivial. EqA, s.212(1).

11. The EqA does not define "normal day-to-day activities". In 2011, the Government issued 'Equality Act 2010 Guidance - Guidance on matters to be taken into account in determining questions relating to the definition of disability' (2011) (Guidance), which the Tribunal should take into account where it considers it to be relevant. EqA, s.6(5). Section D of the Guidance notes:

> *"D2. The Act does not define what is to be regarded as a 'normal day to-day activity'. It is not possible to provide an exhaustive list of day to-day activities, although guidance on this matter is given here and illustrative examples of when it would, and would not, be reasonable to regard an impairment as having a substantial adverse effect on the ability to carry out normal day-to-day activities are shown in the Appendix.*
> *D3. In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern."*

12. When considering the ability to carry out normal day-to-day activities, the Tribunal must focus on those activities which a claimant, because of their impairment, cannot do, not on what they can do. Aderemi v London & South Eastern Railway [2012] UKEAT/0316/12, para. 16.

13. An impairment is treated as having a substantia! adverse effect on the ability to carry out normal day-to-day activities if (a) measures are being taken to treat or correct it, and (b) but for those measures, the impairment would be likely to have that effect. EqA, Schedule 1, para. 5(1). The word *"likely?* means *"could well happen".* SCA Packaging Ltd v Boyle [2009] UKHL 37.

14. Para. B7 of the Guidance states:

> *"B7. Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities. For example, a person who needs to avoid certain substances because of allergies may find the day-to-day activity of eating substantially affected. Account should be taken of the degree to which a person can reasonably be expected to behave in such a way that the impairment ceases to have a substantial adverse effect on his or her ability to carry out normal day-to-day activities."*

15. As a general rule, it is not enough for a claimant to maintain they would be adversely affected if treatment were to stop - medical evidence to that effect is usually necessary. Woodrup v London Borough of Southwark [2002] EWCA Civ. 1716 (claimant claimed her mental condition would deteriorate if her medical treatment for anxiety were to stop, making her a disabled person; Court of Appeal affirmed ET's judgment that claimant had not done enough to prove that stopping treatment would result in the relevant adverse effect). Lord Justice Brown stated at para. 13

> *"In any deduced effects case of this sort the claimant should be required to prove his or her alleged disability with some particularity. Those seeking to invoke this peculiarly benign doctrine under para 6 of the schedule should not readily expect to be indulged by the tribunal of fact. Ordinarily, at least in the present class of case, one would expect clear medical evidence to be necessary."*

16. In J v DLA Piper UK LLP [2010] UKEAT/0263/09, Mr. Justice Underhill stated:

"42. *The first point concerns the legitimacy in principle of the kind of distinction made by the Tribunal, as summarised at para. 33 (3) above, between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness - or, if you prefer, a mental condition - which is conveniently referred to as "clinical depression" and is unquestionably an impairment within the meaning of the Act. The second is not characterised as a mental condition at all but simply as a reaction to adverse circumstances (such as problems at work) or - if the jargon may be forgiven - "adverse life events". We dare say that the value or validity of that distinction could be questioned at the level of deep theory; and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians - it is implicit or explicit in the evidence of each of Dr Brener, Dr MacLeod and Dr Gill in this case - and which should in principle be recognised for the purposes of the Act. We accept that it may be a difficult distinction to apply in a particular case; and the difficulty can be exacerbated by the looseness with which some medical professionals, and most laypeople, use such terms as "depression" ("clinical" or otherwise), "anxiety" and "stress". Fortunately, however, we would not expect those difficulties often to cause a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at para. 40 (2) above, a tribunal starts by considering the adverse effect issue and finds that the claimant's ability to carry out normal day-to-day activities has been substantially impaired by symptoms characteristic of depression for twelve months or more, it would in most cases be likely to conclude that he or she was indeed suffering "clinical depression" rather than simply a reaction to adverse circumstances: it is a common-sense observation that such reactions are not normally long-lived.*

43. We should make it clear that the distinction discussed in the preceding paragraph does not involve the restoration of the requirement previously imposed by para. 1 (1) of Schedule 1 that the claimant prove that he or she is suffering from a "clinically well-recognised illness"; and we reject the contention pleaded at para. 6.1.4 of the Notice of Appeal that the Tribunal erred in law by applying such a distinction. The impact of the repeal of para. 1 (1) is in cases where it is evident from a claimant's symptoms that he or she is suffering from a mental impairment of some kind but where the nature of the impairment is hard to identify or classify. Under the unamended Act, proving the nature of the impairment and that it was "clinically well-recognised" might involve parties and tribunals in difficult, and correspondingly expensive, issues of diagnosis and of psychiatric theory. It is understandable that Parliament should have taken the view that the exercise required by para. 1 (1) was unnecessary and constituted an obstacle to justice. But the problem arose from the requirement for the precise identification and classification of the impairment. The distinction applied in the present case relates to whether there is an impairment at all, which is a different matter."

17. The burden of proof rests on the employee claiming disability to establish that they were disabled at the relevant time on the civil balance of probabilities.

Issue #1: Whether Claimant had adjustment disorder impairment constituting a disability under s.6 of Equality Act 2010

18. The issue is whether during the relevant period the Claimant had an adjustment disorder impairment which had a long-term substantial adverse effect on his ability to carry out normal day-to-day activities.

19. The Tribunal notes at the outset that the medical evidence before it at the OPH was not wholly satisfactory. The Claimant's GP notes were not before the Tribunal either for the relevant period (as defined below) or indeed for any period; there was no report from a consultant, doctor or other medical professional which addressed in detail the Claimant's adjustment disorder, its symptomology, and likely future prognosis; and such medical evidence as there was before the Tribunal largely post-dated the presentation of the ET1 (insofar as it was dated at all) and was not contemporaneous. Notwithstanding the Tribunal's helpful suggestion on 3 August 2022 [SB/56, para. 14] *("Medical evidence (either in the form of medical reports, but preferably, in the particular circumstances of this case, oral evidence from a doctor who has treated the claimant) will be required at the final hearing not only in relation to the issue of disability status in respect of his Epilepsy and Prolonged adjustment disorder, but also in respect of the likely effect of all his disabilities on his conduct …I also suggest that the claimant should seriously consider calling one of his medical advisors, whether his GP or a consultant, to give evidence on his behalf),* the Claimant did not call any consultant, doctor or other medical professional who had treated him to give evidence on his behalf.

20. Relevant period. Approximately one hour of the OPH was taken up discussing what the 'relevant period' was. The parties eventually agreed, and the Tribunal finds, the relevant period of time to be 11 February 2021 - 6 August 2021.

21. Existence of impairment. The Tribunal is satisfied, on the balance of probability, that during the relevant period (as defined above) the Claimant had an adjustment disorder constituting an impairment. The Tribunal reached that conclusion based on the following medical evidence:

a. Dr. Connolly letter (undated) [DB/72]: *"With regard to his mental health, he has been diagnosed as suffering a cognitive impairment following his traumatic brain injury, which was coded in 2006. He was assessed by psychiatric services from 2014 to 2016 and diagnosed with prolonged adjustment disorder and harmful alcohol misuse. He was referred for guided self-help and psychologist input during this time. A psychiatrist's letter in 2015 details difficulties with social integration, feelings of frustration and jealousy and diminished confidence following his accident';*

b. Dr. Brown letter dated 11 August 2021 [DB/731: *"This letter is to confirm that the above named patient experienced a head injury in a car crash in 2001 and has suffered from the following complications:- diabetes insipidus, prolonged adjustment disorder and also suffers with epilepsy in the form of tonic-clonic seizures. He continues to see the epilepsy nurse [ ] and has also been seen by a psychiatrist in the past who diagnosed him with a prolonged adjustment disorder following a road traffic accident in 2001. During one clinical letter from his psychiatrist it is commented that he defined his mood as feeling easily frustrated and jealous of everyone around him.";*

c. Dr. Schultz letter dated 7 June 2022 [DB/77-781: *"He was healthy until a road traffic accident in 2001 when he suffered life changing injury in [the] form of a significant head injury including basal skull fractures, brain haemorrhage and leak of cerebrospinal fluid and several surgeries. Consequences of these injuries include … 5. Prolonged Adjustment disorder and mild cognitive impairment. Mr. Geddes was several times since his accident assessed by Psychiatry and Psychology (2014- 2016)*

and diagnosed with a prolonged Adjustment disorder. Since the accident he can suffer from episodes of low mood and anxiety with disturbed sleep. He needs structure in his life and exact instructions what to do when given a job. If this is not happening (for example change of working pattern or environment) he can get angry and frustrated. He has problems with social integration and diminished confidence. He sometimes suffers from poor memory, recall and difficulties in concentration."

d. Dr. Schultz letter dated 15 August 2022 [DB/79]: *"I consider both diagnoses (epilepsy and adjustment disorder) as lifelong and as a disability."*

22. Substantial adverse effect on ability to carry out normal day-to-day work activities. The Tribunal was not satisfied the Claimant's adjustment disorder had a substantial adverse effect on his ability to carry out normal day-to-day work activities during the relevant period. The Tribunal reached that conclusion on the following grounds:

23. First, there was no suggestion (and if there was, there was no adequate evidence) that the Claimant's adjustment disorder was any worse or more severe in the relevant period than it had been in the period between 16 October 2009 (when his employment commenced) and 10 February 2021. During this earlier period, the Claimant held down his job and performed his work duties. When the Tribunal asked about the 2 year period preceding 11 February 2021 as well as the relevant period, the Claimant was unable to identify any specific work activity he could not do at all because of his adjustment disorder. The Tribunal infers that during this 2 year period and the relevant period as well (given the fact his adjustment disorder impairment did not worsen), the Claimant was able to carry out his normal day-to-day work activities competently and conscientiously.

24. Second, it is not in dispute that in 2019 and 2020, the Claimant was not subject (or, so far as the Tribunal is aware, at risk of being subjected) to a disciplinary hearing or a capability process because he was not performing his work duties

competently or conscientiously. The Tribunal infers that the likely reason for that is because he was performing his normal day-to-day work activities competently and conscientiously during this time. The Tribunal is not satisfied that there is evidence showing that this 'picture' changed before the Claimant's index conduct on 28 April 2021 and 6 May 2021 which subsequently resulted in his dismissal.

25. Third, the Claimant's case is that he was not given any reasonable adjustments for his adjustment disorder at any time, and accepts he was never on medication for same. This means the Claimant cannot argue he was only able to perform his normal work duties competently during the relevant period (or the 2 year period preceding it) because he was only being given adjusted duties and tasks which addressed any workplace disadvantages his adjustment disorder caused him or because he was on medication enabling him to perform those duties.

26. Fourth, the only specific aspect of work which the Claimant identified in his oral evidence that he was no longer able to do as well because of his adjustment disorder was to get on with his fellow colleagues, who he said he sometimes got frustrated with (and who he said sometimes got frustrated with him). However, when the Claimant provided further details, the impairment which the Claimant mentioned was not his adjustment disorder but his blindness, ("They *didn't help me with my disabilities - my blindness").*

27. Fifth, the Tribunal is not satisfied any frustration the Claimant was experiencing with his colleagues during the relevant period (or the 2 year period preceding it) was caused or contributed to by his adjustment disorder. This case encounters at least three substantial difficulties. First, by 2021 his colleagues had changed, hence it is possible that any difficulties and frustrations he was having with his new colleagues in 2021 were caused by personality differences, not his adjustment disorder. Second, the Claimant accepted that since 2018 he has been taking a medication called Levetiracetam for his epilepsy [DB/127], one of whose common side effects (ie, it may affect up to 1 in 10 people) is depression, hostility/aggression, anxiety, insomnia, nervousness and irritability. The Tribunal had no evidence before it which enabled it to rule out a causal connection

between the taking of this medication and the frustration the Claimant claimed to have experienced at work. The Claimant denied any such connection, but he is not a doctor and cannot give expert medical opinion on that issue. This is a matter on which expert evidence from a consultant or doctor would have been extremely helpful. Third, the Claimant has been employed by the Respondent since 2009, and accepted that during that time no prior allegations of misconduct had been made against him. The Tribunal accepts the Respondent's submission that if the Claimant had been experiencing frustration at work because of his adjustment disorder, those frustrations would likely have surfaced some time before 2021.

28. Sixth, the Tribunal was not satisfied by Dr. Schultz' evidence, which suffered from a number of difficulties. First, it was unclear whether her evidence was based on her own assessment of the Claimant or simply based on her reading of the Claimant's historic medical records (her letters conspicuously do not say she personally assessed the Claimant's adjustment disorder). Second, if her evidence was based on historic records, she did not identify those records, and perhaps more importantly, those records were not put before the Tribunal (save in respect of a letter from a Dr. McDougal dated 17 September 2010 [DB/106-107], which reached the following unhelpful conclusion: "*I note that Donald works in the capacity of Outpost Clerk based in the office at Ullapool. In my capacity as General Practitioner I cannot see his current health impacting on his ability to carry [out] the duties you list.").* Third, there was no adequate evidence before the Tribunal that the Claimant had experienced difficulties performing the duties of his post in either the relevant period or the 2 year period that preceded it because of problems with memory, or recall, or difficulties concentrating. The Claimant accepted he had not visited his GP in 2019 or 2020 raising problems at work (and if he did, records of those visits were not put before the Tribunal).

29. Substantial adverse effect on ability to carry out normal day-to-day non-work activities. The Tribunal was not satisfied the Claimant's adjustment disorder had a substantial adverse effect on his ability to carry out normal day-to-day non-work activities during the relevant period. The Tribunal reached that conclusion on the following grounds:

30. First, there was no (or no adequate) evidence before the Tribunal which showed that the Claimant had been experiencing difficulties in his non-work life in the relevant period or, for that matter, in the 2 year period preceding it.

31. Second, the Claimant accepted in his evidence that there had been no activity outside of work which he could not do at all because of his adjustment disorder.

32. Third, when asked whether there was any activity outside of work which he could not do as well because of his adjustment disorder, the Claimant mentioned only two things: shopping and socialising.

33. The Tribunal was not satisfied the Claimant had experienced difficulties shopping because of his adjustment disorder. When asked about this, the Claimant drew an immediate link with his vision impairment, not his adjustment disorder: *"I would get frustrated being in busy places, when you bump into a person it starts with the vision."* The Claimant contrasted his ability to go shopping where he lives with the difficulty he would experience shopping in a place with which he is unfamiliar; but in the Tribunal's judgment, that comparison only tends to underline the fact that in his normal day-to-day life, the Claimant does not experience difficulties shopping which relate to his adjustment disorder. The Claimant accepted he had never been to a doctor complaining about difficulties shopping, and accepted there were no documents in the Disabilities Bundle showing him complaining about having difficulties shopping.

34. The Tribunal was not satisfied the Claimant had experienced difficulties socialising outside of work because of his adjustment disorder. According to the Claimant, by 2021 he had managed to cut his drinking down to a quarter of the level it had been at when he had been diagnosed with alcohol-related problems in 2014-2016 (the Claimant's evidence was that this drinking problem had emerged as far back as 2003), so in this respect, the Claimant's socialising in 2021 was conducted on a much healthier basis than before. The Claimant continued to socialise and go drinking with friends during the relevant period, and was an active member of a local darts team as well as golf team. The Claimant

accepted he had never been to a doctor complaining about difficulties socialising outside of work, and accepted there were no documents in the Disabilities Bundle showing him complaining about having difficulties socialising outside of work.

35. Long-term adverse effect. While the Tribunal is satisfied that the Claimant's adjustment disorder is itself a long-term impairment likely of a permanent nature, what the law requires is that the substantial adverse effect of the impairment be long-term. The Tribunal was not satisfied that any adverse effect the Claimant's adjustment disorder caused him during the relevant period was long-term (ie, had lasted at least 12 months, was likely to last 12 months, or was likely to last for the rest of the Claimant's life).

36. Given the foregoing, it is the Tribunal's judgment that during the relevant period (11 February 2021 - 6 August 2021), the Claimant was not disabled under s.6 of EqA because of an adjustment disorder impairment.

Issue #2: Claimant application to amend ET1 to add claim that Respondent breached duty to make reasonable adjustments under ss.20-21 of EqA by failing to provide advanced rotas ideally monthly to address disadvantages arising from his epilepsy impairment.

37. By email on 25 August 2022 [SB/61], the Claimant confirmed he wished to add to his existing ET claim the following reasonable adjustments claim:

"Epilepsy. The constant lack of rotas enabling me to plan my day was a constant issue causing me considerable anxiety as it could and did interfere with my ability to take my [epilepsy] medication at the given times. Had the company carried out the assessment to accommodate my disability it would have been obvious to them that to call me out at unplanned times would interfere with my medication times.
Reasonable adjustment. CalMac to provide advanced rotas ideally monthly."

38. The Tribunal requested further clarification of this claim from the Claimant, who responded that on his case the Respondent's duty to make this adjustment arose on 1 September 2019 and was breached on 22 November 2019.

39. Having considered the matter, the Tribunal denies the Claimant's application to amend on two grounds:

40. First, the claim is well out of time. If the Respondent breached a duty to make this adjustment on the date the Claimant alleges (22 November 2019), the primary 3 month limitation period in which the Claimant had to present a timely claim relating to this breach expired on about 21 February 2020. The Claimant did not present an ET1 making this complaint then, and waited until 15 September 2021 (a further 18 months) before contacting ACAS. ET claims are meant to be made on a reasonably timely basis - this claim is now stale.

41. Second, the balance of prejudice lies against allowing the amendment. If the amendment is allowed (and this claim is not subsequently dismissed on limitation grounds), the Respondent will have to address a new claim about matters which are now more than 3 years old, inevitably affecting the likely cogency of the documentary evidence and witness evidence it will realistically be able to adduce on the factual matters raised. If an amendment to the ET1 adding this new claim is not allowed, however, the Claimant will still be able to pursue all his existing claims in the pending ET proceeding, and can, if so advised, lodge a fresh ET1 seeking to raise this claim notwithstanding its historic nature. Accordingly, denying the Claimant's application to amend now will not irrevocably *"shut the door"* on this claim being pursued.

Issue #3: Claimant application to amend ET1 to aver that between 11 February - 6 August 2021 no risk assessment was carried out on his eyesight

42. This issue was resolved by consent, accordingly no judicial decision was needed.

43. By email on 31 January 2022 [SB/41-44], the Claimant notified the ET and the Respondent's solicitors of additional factual averments he wished to give in support of his claims, the earliest of which began on 26 June 2018 fSB/411, and which carried through various dates in 2019 [SB/42] and 2020 [SB/42-43], and continued into 2021 beginning on 11 February 2021 and ending on 6 August 2021 when he was dismissed [SB/43-44].

44. At para. 2 of the 4 April 2022 PHCM note [SB/46-47], the Tribunal (EJ Hosie) noted those particulars, and decided The *further and better particulars should be allowed, but only in respect of the allegations on page 3 from 11 February 2021 to the end of that page ending with the words "to help with my disability". For the avoidance of doubt, the claim comprises complaints of unfair dismissal and of disability discrimination (sections 15 and 20 of the 2010 Act)."*

45. The Respondent does not dispute that included within the Claimant's further particulars which the Tribunal allowed on 4 April 2022 was the following averment: *"CalMac did not make reasonable adjustments to allow for my partial sight. This could have prevented many issues in particular the altercation on 26/6/2018 with Adele Nicholson. No risk assessment was carried out for this disability putting me at risk."* fSB/44].

46. On that basis, the Respondent accepted that the Tribunal has already given its permission for the Claimant to include as part of his ET claim a claim that in the period 11 February 2021 - 6 August 2021 the Respondent breached a duty to make a reasonable adjustment for him by failing to conduct a risk assessment concerning his eyesight/partial vision.

Employment Judge: A Tinnion
Date of Judgment: 9 December 2022
Entered in register: 9 December 2022
and copied to parties