EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104279/2024

Held in Glasgow via Cloud Video Platform (CVP) on 30 & 31 October 2024

Employment Judge J McCluskey
Members P McColl and R Henderson

Mr C Dolan	**Claimant** **Represented by:** **Mr J Lawson - Solicitor**
Prestwick Aircraft Management Ltd	**Respondent** **Represented by:** **Ms M Stewart-Davies - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

1. The complaints of direct disability discrimination, indirect disability discrimination and failure to comply with the duty to make reasonable adjustments, having been withdrawn by the claimant are dismissed under Rule 52 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

2. The complaint of discrimination arising from disability is not well-founded and is dismissed.

REASONS

Introduction & Issues

1. The claimant brought complaints of direct disability discrimination, discrimination arising from disability, indirect disability discrimination and failure to comply with the duty to make reasonable adjustments. These were

resisted by the respondent. During the hearing the claimant withdrew his complaints of direct disability discrimination, indirect disability discrimination and failure to comply with the duty to make reasonable adjustments. At the time of representatives' submissions Mr Lawson clarified that the only complaint which the claimant made against the respondent was the complaint of discrimination arising from disability.

2. At a tribunal hearing on 29 August 2024 the claimant was found to be disabled as defined by section 6 EqA at the time of the events that the claim is about. The claimant's disability is dyslexia. In the respondent's submissions at this final hearing, they conceded that they had knowledge of the claimant's dyslexia from around 21 September 2023, the day before the claimant's first exam.

3. The issues to be decided in relation to the complaint of discrimination arising from disability are (i) did the respondent treat the claimant unfavourably by dismissing him; (ii) did the following things arise in consequence of the claimant's disability, which the claimant described in evidence as his "coping mechanisms" namely: reading aloud; speaking to himself as he carries out a task; speaking aloud the steps through an activity; often going on his phone and using google to look up information being taught to him as the information being taught to him is being taught too quickly; (iii) did the respondent dismiss the claimant because of any of these coping mechanisms; (iv) if so was the treatment a proportionate means of achieving a legitimate aim. The respondent accepted that it had knowledge of the claimant's disability from around 21 September 2023.

4. There was a joint file of productions extending to 257 pages. The claimant added an updated schedule of loss and supporting documents on the second day of the hearing. The parties were informed that the tribunal would only read the documents to which we were taken during evidence.

5. The claimant gave evidence on his own behalf. Mr William Calderwood – Technical Trainer, Mr Jason Boyd – Lead Mechanic, Mr Alan Sharp –

Technical Trainer and Mr Andrew Hood – Training Lead gave evidence on behalf of the respondent.

Findings in fact

6. The respondent is a company which carries out aircraft maintenance. They are based in Prestwick and are responsible for the maintenance of Ryanair's Boeing 737 aircraft based at Prestwick airport.

7. The claimant was employed by the respondent from 11 September 2023 until 9 November 2023. He was employed in the role of trainee aircraft mechanic. The claimant was part of a cohort of trainees employed by the respondent who were all carrying out a sixteen-week training course. On successful completion of the training course the trainees become MEC3 mechanics. They work on the maintenance of live aircraft. They work with other qualified aircraft mechanics.

8. The claimant was dismissed during the training course, after around nine weeks of employment.

9. The claimant has dyslexia. As part of the training course the claimant had to pass various exams. The respondent became aware of the claimant's dyslexia on around 21 September 2023, the day before the claimant's first exam. The respondent told the claimant not to worry as the claimant had already completed a course of study at college in Perth where the exams were more difficult. The claimant passed the exam. The claimant passed all the exams he sat during his employment.

10. The claimant relies on various coping mechanisms due to his dyslexia. These are: reading aloud; speaking to himself as he carries out a task; speaking aloud the steps through an activity; and often going on his phone and using google to look up information being taught to him as the information being taught to him is being taught too quickly.

11. The claimant had been using some of his coping strategies during the training course. Mr Andrew Hood – Training Lead as the organiser of the training course had been aware of this.

12. The claimant's coping mechanisms were discussed at a meeting with him on 1 November 2023. In that meeting Mr Hood and Mr William Calderwood – Technical Trainer, asked the claimant to adapt his coping strategy of speaking to himself as he carries out a task by writing in a notebook instead, and to stop using his phone.

13. On 1 November 2023 shortly after the meeting with the claimant, Mr Hood sent the claimant an invitation to a performance meeting which was scheduled for 9 November 2023.

14. During the week beginning 30 October 2023 the claimant and other trainees were assigned to teams. The claimant was in the team led by Mr Jason Boyd – Lead Mechanic. Mr Boyd gave a safety briefing at the beginning of each day before any activity had started. The claimant talked over Mr Boyd during the safety briefing, before any activity had started. Mr Boyd asked the claimant not to do so. The claimant continued to do so. Mr Boyd reported this to Mr Hood.

15. On 6 November 2023 the claimant was in a training group led by Mr Alan Sharp – Technical Trainer. He was new to the respondent's organisation. He had a long career in maintenance of aircraft in the Royal Air Force. He was very experienced in aircraft maintenance. He had no axe to grind with the claimant. He hadn't worked with the claimant before. The group were carrying out practical hand tools tasks. The claimant refused to carry out a task with the hand tools in the way in which Mr Sharp had instructed him, which was in accordance with the instruction manual. The claimant was arguing with Mr Sharp and telling him he knew best. Mr Sharp was really concerned about the claimant's refusal to follow instructions on 6 November 2023. Mr Sharp reported this to Mr Hood that day.

16. Mr Hood took the decision to dismiss the claimant. Mr Hood told the claimant he was dismissed at the meeting on 9 November 2023. The claimant asked Mr Hood why he had been dismissed. Mr Hood replied that HR had told him that no reasons needed to be given.

17. The dismissal letter dated 9 November 2023 stated “We met today to discuss your performance during your probationary period and I explained to you that, unfortunately, you have not reached the standards we require to demonstrate your suitability for the role”. The claimant was dismissed with immediate effect and received a payment in lieu of notice. No other reason was given in the letter for his dismissal.

18. Mr Hood’s reasons for dismissal of the claimant included that the claimant had demonstrated a refusal to follow aircraft procedures and documentation; a refusal to follow the instructions of experienced trainers; and because the claimant had spoken over instructors during the safety briefing.

19. Trainee mechanics, including the claimant, and qualified mechanics undertake a safety critical role in the respondent’s organisation. On successful completion of the training course the trainees, including the claimant if he had completed the course, become MEC3 mechanics. They work on the maintenance of live aircraft. They work with other more qualified aircraft mechanics. The claimant in the role of a MEC3 mechanic would have been required to carry out all maintenance tasks legally and safely. He would have been required to follow the instructions of the more qualified aircraft mechanics and in line with the instruction manual which always needed to be followed to the letter. Following instructions from more qualified mechanics is an essential part of both the training and in the MEC3 qualified role.

20. The aircraft maintained by the respondent’s business carry nearly 300 passengers each. The safety of passengers is a critical aspect of the training and the MEC qualified role. The safety of other colleagues and peers in the workplace and following a safety briefing in the morning before activity started, are essential aspects of the training and the MEC qualified role.

Observations on the evidence

21. This judgment does not seek to address every point upon which we heard evidence. It only deals with the points which are relevant to the issues we must consider, to decide if the claim succeeds or fails. If we have not mentioned a particular point, it does not mean that we have overlooked it. It

is simply because it is not relevant to the issues. Any references to page numbers are to the paginated bundle of productions.

22. The standard of proof is on a balance of probabilities. This means that if we consider that, on the evidence, the occurrence of an event was more likely than not, then we are satisfied that the event in fact occurred. Likewise, if we consider that, on the evidence, an event's occurrence was more likely not to have occurred, then we are satisfied that it did not occur.

23. We found the respondent's witnesses overall to be credible and reliable. There were some disputes in the evidence but mostly these did not relate to matters on which we required to make essential findings in fact. The matter on which there was a dispute and on which we required to make a finding in fact, was about the extent to which the claimant was refusing to carry out the instructions of Mr Sharp on the use of the hand tools on 6 November 2023. The claimant's evidence was that Mr Sharp had not said anything to him about using the hand tools. We preferred the evidence of Mr Sharp. He was new to the respondent's organisation. He had a long career in maintenance of aircraft in the Royal Air Force. He was very experienced. He had no axe to grind with the claimant. He hadn't worked with the claimant before. His evidence was that the claimant had refused to use the tools as Mr Sharp instructed and said he knew best. Mr Sharp's evidence was that he was really concerned about the claimant's refusal to follow instructions and went that day to speak to Mr Hood about it. Mr Hood's evidence was that Mr Sharp had spoken to him about his concerns. We accepted on balance that the occurrence of events on 6 November 2023 was as Mr Sharp had described them in his evidence.

24. We did not regard the fact that we preferred the evidence of the respondent on this matter as tainting the claimant's overall credibility and reliability about his dyslexia and his coping mechanisms.

Relevant law

Disability discrimination

25. Section 15 EqA provides as follows: "*15 Discrimination arising from disability (1) A person (A) discriminates against a disabled person (B) if—(a)A treats B unfavourably because of something arising in consequence of B's disability, and (b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim."*

26. Section 136 EqA provides as follows: *"136 Burden of proof If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. But this provision does not apply if A shows that A did not contravene the provision."*

27. Guidance on how section 15 EqA should be applied was given by the EAT in ***Pnaiser v NHS England*** [2016] IRLR 170, EAT. In that case it was highlighted that 'arising in consequence of' could describe a range of causal links and there may be more than one link. It is a question of fact whether something can properly be said to arise in consequence of disability. The 'something' that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence on the unfavourable treatment and so amount to an effective reason for or cause of it.

28. There is no need for the alleged discriminator to know that the 'something' that causes the treatment arises in consequence of disability. The requirement for knowledge is of the disability only (***City of York Council v Grosset*** [2018] ICR 1492, CA).

29. The EAT held in ***Sheikholeslami v University of Edinburgh*** [2018] IRLR 1090 that: 'the approach to s 15 Equality Act 2010 is now well established and not in dispute on this appeal. In short, this provision requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B's

disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the “something” was a more than trivial part of the reason for unfavourable treatment, then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide, in light of the evidence.’

30. The burden is on the respondent to prove objective justification. To be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so (Homer v Chief Constable of West Yorkshire Police [2012] IRLR 601).

31. The tribunal is required to apply an objective test (***Hensman v Ministry of Defence*** UKEAT/0067/14), albeit that it must assess the proportionality of the impugned treatment at the time it takes place.

Submissions

32. Both representatives made oral submissions. We carefully considered their submissions during our deliberations. We have dealt with the points made in submissions, where relevant, when setting out the facts, the law and the application of the law to those facts in reaching our decision. It should not be taken that a submission was not considered because it is not part of the discussion and decision recorded.

Discussion and decision

33. For a complaint under section 15 EqA to succeed it must be shown that the claimant was unfavourably treated by reason of ‘something’ arising in connection with his disability. If a valid complaint is provisionally made out, the respondent in question may be able to argue that the treatment is justified by being a proportionate means of achieving a legitimate aim. If it can do so the treatment will not be unlawful.

34. “Unfavourable treatment” is not defined in EqA but the EHRC Employment Code states at para. 5.7 that it means that a disabled person “must have been put at a disadvantage’.

35. The act relied upon by the claimant for his discrimination arising from disability complaint is his dismissal on 9 November 2023. We were satisfied that that the claimant's dismissal is 'unfavourable treatment'.

36. The 'something' arising in consequence of the claimant's disability upon which he relies in relation to his dismissal are what he calls his "coping mechanisms". These are: reading aloud; speaking to himself as he carries out a task; speaking aloud the steps through an activity; and often going on his phone and using google to look up information being taught to him as the information being taught to him is being taught too quickly.

37. We considered next whether the "something", namely his coping mechanisms arose in consequence of the claimant's disability of dyslexia. It was held in ***Pnaiser*** that whether something can properly be said to arise in consequence of disability is a question of fact in each case. It is an objective question, unrelated to the subjective thought processes of the respondent, and there is no requirement that the respondent should be aware that the reason for treatment arose in consequence of disability.

38. We considered each of the coping mechanisms identified by the claimant. His evidence of using these mechanisms due to his dyslexia was set out in the claimant's impact statement and in his evidence to the tribunal. It was not disputed by the respondent that these arose in consequence of his disability. We were satisfied that each of the coping mechanisms alleged could properly be said to arise in consequence of the claimant's dyslexia. We had no reason to doubt the claimant's evidence on this matter.

39. We next considered whether the respondent dismissed the claimant because of the something arising ie: any of the claimant's coping mechanisms. We reminded ourselves of the guidance in ***Pnaiser*** that the 'something' that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence on the unfavourable treatment and so amount to an effective reason for or cause of it. We also reminded ourselves of the guidance in ***Sheikholeslami.*** The question whether the respondent treated the claimant unfavourably because

of his coping mechanisms involves an examination of Mr Hood's state of mind (as the person who took the decision to dismiss) to determine what consciously or unconsciously the reason for the dismissal was. If the "something" (any of the coping mechanisms) was a more than trivial part of the reason for the unfavourable treatment, then that part of the test is satisfied.

40. Mr Hood took the decision to dismiss the claimant. The dismissal letter dated 9 November 2023 states "We met today to discuss your performance during your probationary period and I explained to you that, unfortunately, you have not reached the standards we require to demonstrate your suitability for the role". The claimant was dismissed with immediate effect and received a payment in lieu of notice. No other reason was given in the letter for his dismissal.

41. Ms Stewart- Davies submitted that the "something arising" namely the coping mechanisms did not cause the unfavourable treatment of dismissal. She submitted that it was not disputed that the claimant's coping mechanisms were discussed on 1 November 2023 when it was suggested to him that he could write things down and he was asked to stop using his phone. But, she submitted, the coping mechanisms did not have a significant influence on Mr Hood. She submitted that the test was one of "significant influence", namely an influence or cause that operates on the mind of a putative discriminator, whether consciously or subconsciously, to a significant extent and so amounts to an effective cause. (***Charlesworth v Dransfields Engineering Services Ltd*** EAT 0197/16). She submitted that the claimant's actions of interrupting the trainer, arguing back, telling Mr Sharp that he knew best and refusing to follow Mr Sharp's instructions are not the coping mechanisms relied on by the claimant. Nor, she submitted, does the claimant rely on how he speaks to people as a coping mechanism. The claimant talking over Mr Boyd had taken place before the claimant had been asked to carry out an activity in the hangar and are not attributable to speaking to himself whilst he carries out a task or speaking aloud the steps through an activity. Ms Stewart-Davies submitted that the coping mechanisms were not a significant influence on Mr Hood's

decision to dismiss whether consciously or unconsciously to a significant extent.

42. We reminded ourselves that the 'something' that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence. The dismissal letter was brief in its terms and referred simply to "performance". The dismissal letter was of no assistance to us in determining this question. There was no other documentation to which we were referred to assist us in determining this question.

43. In evidence Mr Hood said that his reasons for dismissal of the claimant were that the claimant had demonstrated a refusal to follow aircraft procedures and documentation; a refusal to follow the instructions of experienced trainers; and because the claimant had spoken over instructors during the safety briefing. We accepted that these were some of the reasons why Mr Hood had dismissed the claimant. However, we were also mindful that the claimant had been using some of his coping strategies during the training course and that Mr Hood as the organiser of the training course had been aware of this. The claimant's evidence which was not disputed by the respondent was that at the meeting on 9 November 2023 the claimant asked Mr Hood for reasons why he had been dismissed. Mr Hood replied that HR had told him that no reasons needed to be given. We found this response to be somewhat unsatisfactory. We were concerned by Mr Hood's unwillingness to explain to the claimant why he had been dismissed.

44. We were also mindful that at the meeting on 1 November 2023 Mr Hood and Mr Calderwood had asked the claimant to adapt his coping strategy of speaking to himself as he carries out a task by writing in a notebook instead and to stop using his phone, and that this meeting took place shortly before the invitation to the performance meeting (also sent on 1 November 2023) at which the claimant was dismissed. The 'something' that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence. The invite to the meeting which resulted in his dismissal was sent on the very same day as the

discussion about some of his coping strategies and the request to modify some of his coping strategies. Mr Hood's dismissal letter shed no light on the reasons for dismissal and nor did he shed any light on the reasons for dismissal when the claimant asked him in the dismissal meeting.

45. For these reasons we were satisfied, based on the evidence, that the claimant's coping mechanisms had a significant (or more than trivial) influence on the unfavourable treatment of dismissal.

46. Next, we considered the fourth part of the test in ***Pnaiser,*** namely whether the dismissal of the claimant was a proportionate means of achieving a legitimate aim. The respondent says that their legitimate aim is to ensure that mechanics placed within the business can work safely on aircraft, including working safely with colleagues, and can act in a way that is acceptable towards their peers and superiors. The respondent says that dismissal was a proportionate means of achieving this legitimate aim, given the safety critical nature of the role trainee mechanics and qualified mechanics undertake.

47. We accepted the evidence of the respondent that on successful completion of the training course the trainees, including the claimant if he had completed the course, become MEC3 mechanics. They work on the maintenance of live aircraft. They work with other more qualified aircraft mechanics. The claimant in the role of a MEC3 mechanic would have been required to carry out all maintenance tasks legally and safely. He would have been required to follow the instructions of the more qualified aircraft mechanics and in line with the instruction manual which always needed to be followed to the letter.

48. The respondent was concerned that the continued employment of the claimant would impact on his ability to carry out maintenance tasks safely. They were concerned that he may have refused to follow out the instructions of more qualified aircraft mechanics. He had already shown in training that he was not prepared to follow instructions from more qualified mechanics, such as Mr Sharp. This was an essential part of both the training and in the MEC3 qualified role.

49. The respondent was concerned that the claimant may have continued to talk over trainers and more qualified mechanics first thing in the morning, before the claimant and the team began carrying out an activity. Mr Boyd had reported concerns about the claimant doing so to Mr Hood. Mr Boyd had reported that the claimant had been talking over him first thing in the morning, during the safety briefing, before the claimant and the team began any activity. This happened during the week beginning 30 October 2023 when the claimant and other trainees were assigned to teams to carry out practical hand tool tasks. Mr Boyd reported to Mr Hood that the claimant continued to talk over him throughout the week whilst he was giving the safety briefing at the beginning of the day before any activity had started.

50. We had regard to the guidance of The Equality and Human Rights Commission's Code of Practice on Employment (2011) ('the EHRC Employment Code') on objective justification. As to proportionality, the Code notes that the measure adopted by the employer does not have to be the only possible way of achieving the legitimate aim, but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective (see para 4.31). We asked ourselves whether less discriminatory measures could have been taken to achieve the same objective. We concluded that it could not. The alternative to dismissal was to keep the claimant in employment. The respondent had already tried various steps to meet its legitimate aim. They had given him an opportunity to follow the legitimate instructions of the trainer, but the claimant had been resistant to do so. This was demonstrated when the claimant was arguing with Mr Sharp and refused to follow his instructions when using the hand tools in the hangar. Mr Sharp had many years of experience in aircraft maintenance and was a trainer on the course. The respondent had also given the claimant the opportunity not to talk over the safety briefing before activity started in the morning. The claimant had continued to do so. The claimant did not dispute that this had happened but attributed it to his coping mechanisms.

51. The respondent was very concerned about safety. The maintenance of aircraft was of critical importance. The aircraft carried nearly 300 passengers

each. The safety of passengers was paramount. The claimant had already shown that he was unwilling or unable comply with safety instructions from his more experienced colleagues. Following instructions from more experienced colleagues was a critical aspect of the training role and the role if the claimant had progressed to completion of training and working on live aircraft. The safety of other colleagues and peers in the workplace was a critical aspect of the role. They required to follow the safety briefing in the morning before activity started, without the claimant talking over the safety briefing. We were satisfied having carried out our own balancing act (***Hardy & Hansons plc v Lax*** 2005 ICR 1565, CA) that there was no alternative to dismissal and that that Mr Hood had acted rationally and responsibly in deciding that dismissal was the only option to meet the legitimate aim. We were satisfied that less discriminatory measures could not have been taken by the respondent.

52. Having concluded that the complaint of discrimination arising from disability is not well- founded, there is no requirement for us to consider remedy. The claimant's claim is dismissed.

J McCluskey
Employment Judge

6 December 2024
Date of Judgment

Date sent to parties **6 December 2024**

Notes

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