

2. The Claimant was employed by the Respondent between 30 October 2017 and 28 June 2023 as an Employability and Placements Adviser. This was a role in the Business School assisting mostly BSc undergraduates with their placement year in industry. She resigned giving 3 months' notice on Wednesday 29 March 2023.
3. The Claimant was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) on 11 December 2022 by Dr Iyas Assalman, Consultant Psychiatrist. He completed his report on 6 February 2023. The Claimant informed her line manager, Richard Daniels, of the diagnosis on 11 December 2022. He asked her to complete a referral for Occupational Health on 13 December 2022, which he had to chase on 1 February 2022. She returned it on 7 March 2023. The referral to Occupational Health was made on 9 March 2023. They reported on 23 March 2023.
4. The Respondent accepts that the Claimant was disabled with ADHD and that they had knowledge from 11 December 2022. They accepted this by letter dated 11 June 2024. However, they dispute that the Claimant's resignation was something arising in consequence of her ADHD; that the alleged PCP placed her at the alleged disadvantage; and that the alleged adjustments would have been effective to avoid the alleged disadvantage.
5. There have been 3 Preliminary Hearings in this matter. The last was on 17 December 2024 before Employment Judge Roper. The issues were confirmed then.

THE ISSUES

6. The issues are:-

1. Time limits

1.1 The first claim form was presented on 14 September 2023. The claimant commenced the Early Conciliation process with ACAS on 23 June 2023 (Day A). The Early Conciliation Certificate was issued on 4 August 2023 (Day B). Accordingly, any act or omission which took place before 5 May 2023 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

1.2 Were the discrimination complaints made within the time limit in section

123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus the Early Conciliation extension) of the act or omission to

which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus the Early Conciliation extension) of the end of that

period? 1.2.4 If not, were the claims made within a further period that the

Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Discrimination Arising From Disability (s 15 Equality Act 2010)

2.1 Did the respondent treat the claimant unfavourably by:

2.1.1 accepting her resignation (on 29 March 2023); and

2.1.2 not allowing her to withdraw her resignation (applied for on 30 March 2023 and refused on 20 April 2023, with the claimant's effective date of termination on 28 June 2023).

2.2 Did the following things arise in consequence of the claimant's disability? The claimant's case is that her ADHD means that she is impulsive, and she resigned on impulse in response to a comment to her (on 27 March 2023) about, and the process for, the new job role, which was geared against her, when she might not have otherwise resigned.

2.3 Was the unfavourable treatment because of any of that thing which is said to have arisen from the claimant's disability?

2.4 Was the treatment a proportionate means of achieving a legitimate aim? As per paragraph 69 of the Amended Grounds of Response, the respondent says that its aims were the business need for a Team Leader to address concerns over support to the team supporting the Respondent's Business School modules/programmes and the modules/programmes themselves, improve student satisfaction and address issues around service delivery. The claimant resigned her employment and the savings from her salary were used to secure funding for the Team Leader role on a permanent basis (see paragraphs 18 and 44). This was a reasonably necessary means of doing so, funding only having been secured for a maximum of four months, to the end of the respondent's financial year (paragraph 20).

2.5 The Tribunal will decide in particular:

2.5.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims; and

2.5.2 Could something less discriminatory have been done instead; and

2.5.3 How should the needs of the claimant and the respondent be balanced?

2.6 Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? If so, from what date?

3. Reasonable Adjustments (ss 20 and 21 Equality Act 2010)

3.1 Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? If so from what date?

3.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCP, namely accepting resignations without a means of withdrawal? (The respondent asserts that there is no such PCP in place and accordingly that it is effectively the end of the claimant's claim in this respect).

3.3 Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that she resigned on impulse?

3.4 Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

3.5 What steps (the 'adjustments') could have been taken to avoid the disadvantage? The claimant suggests:

3.5.1 not accepting her resignation; and

3.5.2 allowing her to withdraw her resignation.

3.6 Was it reasonable for the respondent to have to take those steps

and when?

3.7 Did the respondent fail to take those steps?

7. Accordingly, the acts of discrimination are said to be first, accepting the Claimant's resignation and secondly, not permitting her to withdraw it. The premise is that her decision to resign was an impulsive one which was a result of her ADHD.

THE LAW

8. Discrimination arising from disability. By s.15 EqA 2010

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

9. Duty to make adjustments. By s. 20 EqA 2010

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

10. We have been referred to the line of authorities concerning resignations in the heat of the moment. In Omar v Epping Forest CAB [2023] EAT 132 Judge Stout reminded us that in terms of whether there has been a

dismissal for the purposes of the unfair dismissal law, the issue was one of contractual principles:

Whether or not an employee was dismissed for the purposes of section 95 of the Employment Rights Act 1996 was determined by reference to ordinary contractual principles, and the conventional contractual position was that a notice of resignation once given could not be unilaterally retracted; that the so-called special circumstances exception was not in truth an exception to the general rules about notices of termination in the employment context, so that even in difficult cases basic contractual principles still applied; that whether a notice of termination had been effectively given had to be determined objectively, by reference to the language used and the circumstances in which it was used, including all matters within the knowledge of the parties at the time, but not by reference to the subjective intentions of the parties; that the words used had not only to constitute words of termination but had to represent a genuine intention to resign at the time they were said; that, however, if the speaker of the words appeared to be acting irrationally, as in not in their right mind, then that would be a circumstance in which it should be concluded that the words were not really intended; that, therefore, the question of whether an employee in the position of the claimant had resigned was to be determined objectively from the perspective of the reasonable bystander asking whether it would have appeared to a reasonable employer that, in all the circumstances, the employee had really intended to resign.

11. The Claimant is right to accept that in this case there was a resignation. Her question is whether it was the result of a trait of her ADHD.
12. We have been referred to an ET case Bradley v Royal Mint Ltd 1601525/2022, a case from the Cardiff ET. In that case the Claimant was suffering from a mental illness – anxiety - when she resigned. That makes it different from our case, where the Claimant was not mentally ill.
13. We have been referred by the Respondent to Royal Bank of Scotland plc v Morris UKEAT/0436/10 and Royal Borough of Greenwich v Syed UKEAT/0244/14 as authority for the proposition, in effect, that where the Tribunal needs focussed medical opinion it should not speculate as to the medical position in its absence.

FINDINGS OF FACT ON THE ISSUES

The Claimant's Attention Deficit Hyperactivity Disorder (ADHD)

The Psychiatric Report dated 6 February 2023

14. To the Psychiatrist the Claimant said she struggled significantly at work especially when not doing things in a specific way. This was creating problems with her line manager. At school she suggested she had a problem with procrastination. Her mental health was impacted. She was depressed. She said she felt it very difficult to start doing things. She kept postponing tasks and she puts things off at home and at work. She is a daydreamer and can lose time having different ideas and thoughts. She gets distracted. She is aware that she needs to complete work but she

usually feels frozen and physically unable to do it. She keeps doing everything other than what she needs to do. She reported poor concentration. She is often late because she leaves everything until the last minute.

15. She gets a thrill from buying things impulsively, she continued to tell the psychiatrist. She has mood swings. In the pre-assessment questionnaires, she answered 'often' or 'very often' to 8 out of 9 questions on inattentiveness and to 8 out of 9 questions on hyperactivity/impulsivity. She gave the following examples:

Often find it difficult to follow instructions and my manager likes to have lots of trackers and write lots of guidance. I tend to rush in and start without reading all the information as I am impatient to get going and cannot be bothered with all the detail. Have had issues through various roles with this where I have not followed up properly or not written a report on time or when needed. I have to cut out everything else in order to get this done and almost need to be micromanaged to get things done; yet in having someone keep asking me if I have got it done, it drives me mad and I hate it. Even if I know I should be doing something I sometimes just cannot do it - it is like it is in the background and I can just ignore it. I have to be really disciplined and take out any other distractions to get lost in being able to do something or I have to give myself a game within the task as to how I am going to do it - so perhaps I do one section of marking first and then see how quickly I can take on the next section in my head to make it more interesting.

I am quite good at organising tasks and activities and can be very thorough but less good at seeing it through; so good at delegating and managing tasks and giving support and ideas. Depends if I am interested in it or not. Probably good at tasks that there are a lot of different activities that need to be done and I get a buzz from juggling lots of different things rather than doing one thing. I have real difficulty at work to do tasks required such as completing paperwork, marking assignments, filling in tracker sheets - we have so many trackers and I get easily confused and just cannot do it. Always losing keys, phone, glasses or misplacing and have to take everything apart to find them. At work I am easily distracted and will do anything rather than the task in hand. There always seems to be something more interesting to sidetrack me and I have to be really careful not to read personal emails and messages at work otherwise I can spend all morning on those rather than what I should be doing. I want to clean the house but never get round to it - always something else to do. I have had problems in jobs where things have gone wrong and I have tried to rectify them and cannot and have had disciplinary actions in the past. I know I have a list of things to do and just forget them completely. I have to keep going back to things and writing lists but even then I often forget to look at the list. I have to really try to structure my day and need help keeping on this...

I tap my feet on my work chair. I can get distracted in meetings as I am trying to concentrate on staying put and not fidgeting so I become focused on that rather than the meeting or I start to day dream. It takes a lot of effort to remain concentrating and doing teams meetings is a nightmare although it does mean that I can be doing something else while in the meeting - like typing or looking at other things.

16. Dr Assalman concluded that the Claimant presents with multiple symptoms of ADHD including inattention, poor focus and concentration. The symptoms have been present since childhood. The diagnosis was corroborated by informant reports and standardised rating scale. She met the criteria for Adult ADHD as follows:-

Criterion A – She met the criteria for inattentive and hyperactive/impulsive symptoms

Criterion B – She gave a history of lifelong pattern supported by a collateral report from her brother.

Criterion C/D – She has impairment in multiple domains of functioning

Criterion E – These symptoms cannot be explained by another psychiatric disorder

The Occupational Health Report

17. The Claimant reported difficulty in concentration and being easily distracted; skills in organisation and planning were also affected. She reported that she consistently met performance objectives, however, she could often feel overwhelmed and exhausted by work. She had recently made the decision to reduce her working hours, which had made a significant difference to managing her symptoms. The Claimant was likely disabled within the meaning of the Equality Act 2010.

18. Tamsin Hart, Occupational Health Adviser recommended that the following adjustments should be considered:

I recommend Caroline works in a quiet area of the office, away from distractions. Provision of noise cancelling headphones may also be beneficial while engaged in tasks such as marking, that require focus.

We discussed the use of alarms to keep her on track. These can help as reminders to return to the task if distracted.

Breaking tasks down into small manageable chunks that are time specific.

Please ensure job demands commensurate with her new working hours.

Further preferences to support her work may be identified through coaching.

A Wellness Action Plan can be adapted for ADHD and serves as a useful tool to promote a conversation on what difficulties Caroline has at work and what she needs to remain healthy.

The week beginning 27 March 2023

19. There was a regular 1:1 meeting between the Claimant and her line manager Richard Daniels at 3pm that day. We have Mr Daniels note of this

- meeting, which is likely to be reliable. They discussed the OH report above. No other adjustments were required. They discussed how the Claimant was getting on with marking students' application forms for placements.
20. The Claimant raised the Team Leader role. Mr Daniels felt that he needed a Team Leader to assist him with managing the team. It was known that an application process for an Acting Team Leader was about to be undertaken. The Claimant indicated she wished to apply for the role. She felt she had the skills to perform the role and wanted to work on the new WIE (With Industrial Experience) programme.
21. Mr Daniels responded by stating that the Claimant was good at aspects of the role but he was not confident on her ability to organize and prioritise. There had been performance issues in recent months which had required managing. He said he did not think that she had had enough time to demonstrate the skills. The Tribunal is not surprised to read that given what the Claimant herself said to the psychiatrist. The Claimant said she disagreed. She mentioned that she had applied for 7 F grade roles previously (promotion from E grade roles) and had been unsuccessful. Mr Daniels recorded and maintains that she said if she did not get this acting up role she would resign and would find another job. The Claimant says in her witness statement that she 'would have to consider resigning if I did not get this role and it was given to someone with far less experience'. On either account she raised the matter of resignation. She told us that she wanted to test his reaction.
22. We prefer Mr Daniels account of the conversation. It was completed whilst his memory was fresh. She said we would resign rather than saying she would consider resigning. It was not reasonable of the Claimant to assume that she should get the promotion and then to say she would resign if she did not get it. She herself knew that there had been performance issues with her role, as she told the psychiatrist.
23. The Claimant is right that Mr Daniels would not have supported her application at the selection board. He did indicate that to her in this conversation. The job was intended for the person who was the only applicant in the event, Dr Lee Wylie. That said, Mr Daniels did facilitate the Claimant to apply for it by providing a timetable for her to be interviewed before she was leaving for Australia for a month to see her daughter.
24. Mr Daniels announced the Team Leader opportunity by email at 9.19pm on that Monday 27 March 2023. The Claimant emailed on the Tuesday at 8.59 am stating that she was interested in the role but did not work Fridays. She had appointments that Friday. If she got an interview, could they work round that. Mr Daniels said they could get it to work by covering any work. She thanked him for his consideration.
25. In the event she did not apply, she resigned. She tells us she attempted to prepare an application on the Tuesday evening. Having had little sleep that night, 4 hours she tells us, she tried to continue with her application in the

morning but then decided to resign. She wrote a resignation email and a resignation letter in the morning, she tells us. These were sent Wednesday morning at 9.49am. The email stated –

Dear Rich

Please find attached my resignation. It is with regret that I submit this but I do not feel that my position is tenable and you clearly stated your reluctance to appoint me as Team leader so it seems a waste of my time to apply.

I have thought about this long and hard having started the application and then considered how impossible this situation was with me only being in work until tomorrow and having a lot to get done before a protracted period of leave which has been well known since October 2022.

I enclose my CV so that you can see that actually I do have the skills and experience required as well as over 5 years working with placements. Sadly these skills and experiences never seem to have been appreciated whilst working at SEAS and I have not been afforded opportunities to utilise or develop these meaningfully during my tenure.

I am going to spend the rest of my working week trying to get up to date on my placement paperwork before I go on leave. I also have a lot of student appointments today.

I do not have another job to go to but will be applying once I return from Australia.

Best

Caroline

26. The letter stated:-

Dear Richard

RESIGNATION

It is with regret that I formally hand in my resignation in the role as Employability and Placements Adviser at the Business School with immediate effect.

As you are aware I was keen to be afforded the opportunity to lead the team and redesign and develop the WIE programme but following our conversation on Monday it would seem that I really do not stand a chance in this if you are stating clearly that you would have reservations in appointing me.

Added to this and knowing that my last day at work is tomorrow, 30th, having an application that is required to be in today and interviews on Friday 31st this seems unreasonable to me to try to get up to date with all of my work prior to going on leave for

a month and to try to fit in an application process when the outcome seems a foregone conclusion. I know that you, and Dawn, will say this is not so but the job description is very specifically allied to probably only one person, maybe two, in the team – this was commented on by colleagues in the wider placement team yesterday.

Sadly I do not believe that my broader skills and experience are valued and I enclose my CV for you to see how much management experience I have and much experience of strategy, forward planning and commercial experience I also possess. I am sad that this had not been recognised during my time at SEAS.

I also have concerns that you spoke about my difficulty with organisation. I do not have difficulty organising things, I just do it my way and previous employers have valued my ability to pragmatically solve problems and my ability to come up with great ideas and implement them. Yes I did have difficulty when diagnosed with Chronic Fatigue Syndrome 18 months ago and a change in medication resolved this together with my own decision to reduce hours to mitigate these symptoms. My neurodiversity does mean that I manage deadlines in a non-linear way but I have never missed a deadline. My recent OH meeting showed that I was capable of doing my job.

By my calculation and taking into account that I carried over 7.5 days leave from last year for my trip to Australia. I will still have 8 days leave left to take before the end of June plus a day owed for flexi time for the Fridays that I worked this term and the OHVD (approved for 12 June) This will mean that my final day at work, subject to confirmation from HR will be 15th June 2023.

This will give me enough time to finish the Application assignment marking, moderation and release of marks and conduct the recruitment and interviewing for the new WIE Ambassadors.

Yours faithfully

27. The Claimant also wrote this in a Teams message to a colleague team member, Nicky Taylor.

[3/29 1:31 PM] Pile, Caroline

Difficulty is with RD who will have a different viewpoint but when I said I was really keen on the team leader role stated that he would not be inclined to appoint me. He thinks I am not organised and cannot prioritise but I am and I do and I meet deadlines but not in his linear way (I was diagnosed with ADHD in Dec) and he thinks there is too much to lose if this role fails. Based on that I decided not to apply with a deadline of midday today (email for ad was sent after 9pm on Mon) with interviews on Friday which is a non-work day and given that I go to Australia on Sat I do have quite a few appointments in my last day in UK. I had told him that if I did not get the job I would have to resign as I have been in this role for 5.5 years. I have had other issues with my manager in the past too so this is the straw. I think he will appoint Lee who is brilliant and I would not want to go through a sham process and then resign as it is not about another valued and great team member. The list of skills and attributes was very specific and meant that none of the wide placement team staff could apply.

28. We would observe again that she was rather more forthcoming about difficulties at work with the Psychiatrist.

29. An employer does not have to accept a resignation for a resignation to be effective. It is not like a Prime Minister having to accept the resignation of a minister. Mr Daniels acknowledged the resignation by email on the Wednesday at 12.05. Mr Daniels had telephoned Dr Dawn Lees upon receipt of the Claimant's resignation. Dr Lees is Mr Daniel's line manager, the Claimant's second line manager. They decided not to seek to talk the Claimant out of it. They needed funding for the Team Leader role going forward and this resignation freed up some money. We have little doubt that the performance concerns Mr Daniels had about the Claimant contributed to the decision not to challenge the resignation. On his having mentioned reservations about her applying for the acting up role he said this –

In our catch up on Monday you wanted to talk about the Team Leader post, and I said that whilst you do you have a number of skills that are relevant to the post, my main concerns were around your organisation and prioritisation. I went on to say that I spent a lot of time last year supporting you with your organisation and prioritisation skills and don't feel confident that you could effectively manage all of the placement programmes/modules in the Business School as this is a much bigger task than your current role. It also has a much higher impact if not done well. However, I would have welcomed your application and to have given you the opportunity to engage with the recruitment process for this post.

Whilst she could have applied, the Claimant was very unlikely to get the Acting team Leader role.

30. On Thursday 30 March 2023 the Claimant asked to talk to Dr Lees to let her know 'where she was coming from'. She mentioned that the colleague Nicky Thomas had asked her to reconsider her decision. Other members of the team, including Lee Wylie had asked her to reconsider her decision. She said that this support was not expected at all and that although she needed to make a stand about how she was being treated, perhaps there was another way forward.

31. There was a meeting with Dr Lees on the Friday. Had the Claimant applied for the job, she might have been interviewed on this Friday. She was flying to Australia on the Saturday for a month. The Claimant said she was not resigning because of a hissy fit. The issue was being told she would not get the post. She disputed that she was not organized. She did not work in a linear fashion but felt she got the job done. She mentioned the diagnosis of ADHD since Christmas. She felt the turnaround for the application was too tight. She had dropped to 0.8fte owing to chronic fatigue, menopause and ADHD, although the ADHD diagnosis post-dated the reduction in hours.

32. The Claimant indicated she was considering taking out a grievance. The employer should be adaptable to the way work was done – and not expect things done in a certain way, she argued. She felt that ADHD had something to do with it. That reference to ADHD was a reference to how she performed her work. At the conclusion of the meeting the Claimant

indicated she would withdraw her resignation. Dawn Lees said it was not as simple as that. It was now a HR issue. After that meeting Dawn Lees asked Mr Daniels what was more important: the Claimant's role or the team leader role, Mr Daniels stated it was the latter.

33. The Claimant did not say in the meeting with Dawn Lees that her decision to resign was an impulsive one, an aspect of her ADHD, which she regretted. She sought to justify it as result of what she described as mistreatment.
34. HR stated it was a matter for the line management. Line management maintained the position that they would not allow the Claimant to withdraw her resignation. There was a meeting on 20 April which included Mr Daniels and Dawn Lees. Line management wanted the funding for the Team Leader role going forward. It seems likely to us that performance concerns also played a role. The Claimant received an email on 20 April to the effect that the resignation would be accepted.
35. Dawn Lees stated in an email dated 1 June 2023 first that it seemed the Claimant's decision to resign was a considered one; and secondly, in considering whether they still needed the Claimant's role, upon considering the request to withdraw the resignation, they needed the Team Leader role more, which could then be funded.
36. The Claimant did bring a grievance on 2 June 2023. She argued the resignation was made in the heat of the moment and that the refusal to allow her to withdraw her resignation was a failure to make a reasonable adjustment.
37. The outcome of the grievance and the grievance appeal was that the University rejected the position that the resignation was an impulsive decision, the result of her disability. They held it was a considered position. The Grievance Appeal officer, Jim Price, nonetheless thought that communication from the University could have been better during the 3 month notice period and placed the Claimant on the redeployment list. From this list, we are pleased to say, she obtained a post entitled Impact and Partnership Development Officer within the Innovation, Impact and Business Department, which, as we understand it, is promoting University courses to be undertaken within the NHS.
38. Whilst Mr Price rejected that the Claimant's resignation was a manifestation of ADHD, he nonetheless recommended the following:

We would therefore like to make the following recommendations:

- 1) that in addition to granting you associate status and providing support from an HR advisor in identifying suitable vacancies and training on interview techniques, that you be granted redeployment status, which will give you priority consideration during the recruitment process- for roles where you match the essential criteria (subject to whether any other redeployees have applied for the same role, in which case there will

be competitive selection between redeployees) and pay protection for one year should you apply for a role at a lower grade. This will apply for a period of six months from the date of this letter and to any roles which you have recently applied for and have not yet been shortlisted.

- 2) a member of SEAS should be identified to provide a reference in support of future job applications, the wording of which will be agreed with you.
- 3) that the issues raised around lack of communication and the management of the recruitment process for the new post should be raised directly with the managers involved.
- 4) that managers receive training in working with neurodiverse members of staff.
- 5) that HR develop guidance for managers to help them consider requests to retract notice of resignation.

39. That list represents some wins for the Claimant on any view.

CONCLUSIONS

Time Limits

40. If liability were established, and if the claim was otherwise out of time, we have little doubt that it would be just and equitable to extend time. There was an exhaustive grievance process, at the conclusion of which the Claimant won some recommendations at the very least. The Respondent has not been evidentially prejudiced by any delay. This case is not decided on time limits.

Discrimination Arising from Disability

41. The Respondent did treat the Claimant unfavourably by not allowing her to withdraw her resignation. We agree with the Respondent that 'acceptance' of resignation is a misconceived argument because a resignation of an employment contract has effect without acceptance. However, there was a positive decision not to allow her to withdraw, and that is unfavourable to her.

42. Moreover, *if* the resignation arose from her ADHD, the Respondent would not justify the refusal because it did not weigh her disability in the balance.

43. The key question, therefore, is whether the decision to resign was an impulsive one arising in consequence of her disability. The Tribunal is divided on that question.

44. The majority (Ms Clarke and the Employment Judge) find as a fact that the decision to resign was not an impulsive one arising from the disability of

Attention Deficit and Hyperactivity Disorder. The Claimant first said she would resign on the Monday afternoon if she did not get the Acting up role. She told us she did that deliberately to test out her line manager. It was indicated to her then that Mr Daniels had reservations about whether she could demonstrate suitability given the performance issues that had arisen in the previous year. The Claimant then considered the implications of that as she otherwise prepared her application for the role, and decided to abandon her application and write the email and letter of resignation above, describing to her colleague, Nicky Thomas, Mr Daniel's position as 'the last straw'. The majority agree with the grievance officer (Astrid Wissenburg) and the Grievance Appeal Officer (Jim Price) that this was a considered and not an impulsive decision, however unwise.

45. Further, the majority find that the available medical evidence does not enable a finding that the decision-making process leading to her resignation was a manifestation of ADHD. The medical evidence does not engage a decision-making process about future employment taken over 40 hours.
46. In contrast, Mr Sleeth, finds that impulsivity was a trait identified by the Psychiatric report. Apparently, the panel hearing the original grievance refused to admit the Psychiatric report, focusing only on the OH report. However, the OH report concentrated on adjustments at work rather than the nature of ADHD. The Psychiatric report would have helped on that. No further medical advice was sought. Mr Sleeth finds that the decision to resign was only arrived at on the Wednesday morning after a night with limited sleep. The decision was not a rational one. The Claimant enjoyed the job and she needed the job financially. The irrational nature of the decision points to impulsiveness. As the recommendations of Mr Price in part show, the Respondent is a large well-resourced employer and could and should have explored the rationality of the resignation to see whether in fact her known disability had played a role. Instead, opportunistically, they jumped at the opportunity to fund the Team Leader role.
47. As the majority findings prevail, the claim of discrimination arising from disability fails by majority decision.

Failure to make reasonable adjustments

48. The PCP alleged by the Claimant does not work. The Respondent did not have a practice of accepting resignations without a means of withdrawal. The practice was, in keeping with basic contractual principles, that a resignation could only be withdrawn with the permission of managers. Did that practice put her at a substantial disadvantage. Anyone would have to ask for permission to withdraw a resignation. We do not have evidence that a person with ADHD is more prone to resign. We cannot make that finding in the absence of considered medical opinion. The Claimant had been in this role for 5 and a half years. She had been in the army for 6 years. She does not show that she was more prone to resign. The Claimant does not

show a PCP that put her at substantial disadvantage. The claim of failure to make reasonable adjustments fails.

49. The claim overall, therefore, fails, albeit by a majority on the question of discrimination arising from disability.

Employment Judge Smail

Date: 25 March 2025

Judgment sent to the parties on
9 April 2025

Jade Lobb
For the Tribunal Office