EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss Nicola Hunt	**v**	London Ambulance Service NHS Trust

Heard at: Norwich

On: 18 and 19 June 2024
24 and 25 February 2025

In Chambers: 28 March 2025

Before: Employment Judge Postle

Members: Ms L Davies and Ms B Handley Howarth

Appearances

For the Claimant: In person

For the Respondent: Miss Skinner, Counsel (17, 18, 19 June 2024)
Miss D Van der Berg, Counsel (24, 25 February 2025)

RESERVED JUDGMENT

1. The Claimant was not a disabled person with ADHD within the meaning of Section 6 of the Equality Act 2010.

2. The Claimant's claim for constructive unfair dismissal is not well founded.

3. Apart from one of the reasonable adjustment claims, all the other reasonable adjustment claims are out of time and it not being just and equitable to extend time.

4. Even if the Claimant satisfied the definition of disability, the reasonable adjustment claim for provision of an Apple Pen being in time, was not well founded as that adjustment had been made.

REASONS

The Claims

1. The Claimant brings claims of constructive unfair dismissal under the Employment Rights Act 1996 and claims under the Equality Act 2010 for the protected characteristic of disability. The Claimant's only advanced disability before this Hearing is ADHD.

2. In respect of the Claimant's ADHD, the Respondents confirmed at the outset of this Hearing whilst they accept the Claimant has a condition of ADHD, the Respondents do not accept it amounts to a disability in Law, nor do they accept they had actual or constructive knowledge of the disability.

3. The Claimant's specific claims were set out in a Case Management Hearing before Employment Judge Alliott on 13 November 2023 and are to be found at pages 50 – 52 of today's Hearing Bundle. They are constructive unfair dismissal under the Employment Rights Act 1996 and claims under the Equality Act 2010 for failure to make reasonable adjustments.

Evidence

4. In this Tribunal we heard evidence from the Claimant through a prepared Witness Statement.

5. The Claimant has also provided a Disability Impact Statement which is to be found at pages 104 – 107 of the Hearing Bundle.

6. For the Respondents we heard evidence from:

    - Miss C Coutts, Driving Standards Support Manager;
    - Miss H Curror, Director of Clinical Education (Interim) now Head of Clinical Education; and
    - Ms A Jardine, Area Operations Manager and Group Manager at the time of the Claimant's employment, who has since left the Respondent's employment in October 2023.

    All giving their evidence through prepared Witness Statements.

7. The Tribunal also had the benefit of a Bundle of documents including additional documents provided during the course of the Hearing consisting of 714 pages.

The Law

Constructive Unfair Dismissal – §.94, 98 Employment Rights Act 1996

8. Section 95 of the Employment Rights Act 1996 provides:

> 95. Circumstances in which an employee is dismissed
>
> (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only, if) –
>
> (a) …
>
> (b) …
>
> (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

9. In the leading case in this area, Western Excavating (ECC) Limited v Sharp [1978] ICR 221, CA, the Court of Appeal ruled that for an employer's conduct to give rise to a constructive dismissal it must involve a repudiatory breach of contract. As Lord Denning MR put it:

> "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."

10. Therefore in order to claim constructive dismissal, the employee must establish that:

    10.1. there was a fundamental breach of the contract on the part of the employer;

    10.2. the employer's breach caused the employee to resign; and

    10.3. the employee did not delay too long before resigning thus affirming the contract in losing the right to claim constructive dismissal.

11. The Tribunal will therefore be considering whether the employer has in some way acted without just or reasonable cause which is likely to seriously damage the implied term of trust and confidence between the parties.

12. It is correct that the employee's resignation must have been caused by the breach of contract in issue. That means if there is an underlying (or ulterior) reason for the employee's resignation, such that he or she would have left anyway irrespective of the employer's conduct, then there has not been a constructive dismissal.

13. The actual breach needs to be the affective reason, it does not need to be the only reason for the dismissal.

14. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a "last straw" incident, even though the last straw by itself does not amount to a breach of contract.

15. The Court of Appeal set out in Omilaju v Waltham Forest London Borough Council [2005] ICR 481, CA, that acts constituting the last straw does not have to be of the same character as earlier acts, nor does it need to constitute unreasonable blameworthy conduct. However, in most cases it will do so. The last straw must contribute to the breach of the implied term of trust and confidence. Therefore an entirely innocuous act on the part of the employer cannot be a final straw, only if the employee genuinely but mistakenly interprets the act as hurtful and destructive of his or her trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is an objective one.

Disability – s.6 Equality Act 2010

16. The Equality Act 2010 defines a "disabled person" as:

> 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.

17. The burden of proof is on the Claimant to show that she satisfies this definition.

18. Section 6 of the Equality Act 2010 also requires a Tribunal to look at the evidence by reference to four different questions (or conditions):

    18.1. Did the Claimant have a mental and / or physical impairment? (the impairment condition)

    18.2. Did the impairment affect the Claimant's ability to carry out normal day to day activities? (the adverse effect of the condition)

    18.3. Was the adverse effect of the condition substantial? (a substantial condition)

    18.4. Was the adverse condition long term? (the long term condition)

19. Those four questions should be posed sequentially and not together.

20. The Government has also issued Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011) (the Guidance) under s.6(5) of the Equality Act 2010. It is

important to note that the Guidance does not impose any legal obligations in itself, but Tribunals must take account of it where they consider it to be relevant.

21. Furthermore, the Equality and Human Rights Commission (EHRC) has published a Code of Practice on Employment (2015) (the EHRC Employment Code) which has some bearing on the meaning of disability under the Equality Act 2010. Like the Guidance, the Code does not impose legal obligation. Tribunals must take into account any part of the Code that appears to be then relevant to the questions arising in proceedings before them.

22. The effect of an impairment is long term if it has lasted, or is likely to last, for at least 12 months or is likely to last for the rest of the life of the person affected (para. 2.1 Schedule 1 Equality Act 2010).

23. The time at which to assess the disability is the date of the alleged discriminatory act. The date of the discriminatory act is also the material time when determining whether the impairment has or is likely to have a long term effect.

24. As regards substantial, that is defined in s.212(1) of the Equality Act 2010 as meaning:

> "more than minor or trivial"

25. In determining whether an adverse effect is substantial, the Tribunal must compare the Claimant's ability to carry out normal day to day activities with the ability he or she would have if not impaired.

26. In relation to normal day to day activities, Section D of the Guidance deals with the issue of normal day to day activities and whether a person's ability to carry out such activities is substantially and adversely affected by the impairment in question.

27. Section D3 of the Guidance gives examples of normal day to day activities, namely things to do on a regular and daily basis such as: 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 using various forms of transport and taking part in social activities.

28. Appendix 1 of the EHRC Employment Code states that, "normal day to day activities" are activities that are carried out by most men or women on a fairly regular and frequent basis and give examples such as walking, driving, typing and forming relationships.

29. Appendix 1 paragraph 9 to the Code says that account should be taken not only of evidence that a person is performing a particular activity less well, but also of evidence that,

> "…a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment or because of a loss of energy and motivation."

Failure to make reasonable adjustments – §.20, 21 Equality Act 2010

30. Under s.20(3) of the Equality Act 2010,

> 20. Duty to make reasonable adjustments
>
> (3) The first requirement is a requirement, where a provision, criterion or practice of the Respondent 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.

31. A failure to comply with this requirement is a failure to provide reasonable adjustments.

32. In respect of the duty to make reasonable adjustments, the Claimant bears the burden of establishing a prima facie case that the duty to make reasonable adjustments has arisen and that there are facts from which it could be reasonably inferred without a proper explanation that the duty has been breached. The onus therefore falls on the Claimant, not the employer, to identify in broad terms the nature of the adjustment that would remove the substantial disadvantage. If that is done, the burden then shifts to the employer to show that disadvantage would not have been eliminated or reduced by the proposed adjustment and / or the adjustment in any event was not a reasonable one to make.

33. In respect of substantial disadvantage, it is worthy of note that the duty to make reasonable adjustments only arises where the disabled person in question is put at "a substantial disadvantage" in relation to relevant matters in comparison with person who are not disabled. Therefore the Tribunal must undertake an assessment of the alleged substantial disadvantage caused by the disability and set out exactly what it considers the Claimant can and cannot do because of her disability. It is also true that in considering the PCP, Tribunals must ensure that the questions of whether and to what extent the Claimant has suffered a disadvantage are assessed properly in the light of the particular PCP being relied upon.

34. In such cases the correct comparator is not the population at large, but someone in a comparable position to that of the Claimant who does not have the disability relied upon.

35. In relation to the knowledge of the substantial disadvantage, even where the employer knows the employee has a disadvantage it will not be liable for the failure to make adjustments if it "does not know and could not reasonably be expected to know" that a particular PCP, physical feature of the workplace or failure to provide an auxiliary aid, be likely to place that

employee at a substantial disadvantage (s.20(1)(b) and Schedule 8 of the Equality Act 2010).

36. Therefore a Tribunal must be satisfied that the employer had actual or constructive knowledge of the Claimant's disability which was, at the material time, putting them at a substantial disadvantage. If it did not, the duty to make reasonable adjustments is not triggered.

37. Insofar as reasonable adjustments are concerned, it is an objective one and the Tribunals must take into account the effectiveness of any adjustment, cost, practicability and the nature and size of the employer's organisation.

Time Limits in discrimination cases – s.123 Equality Act 2010

38. Section 123(1) of the Equality Act 2010 provides,

> 123. Time Limits
>
> (1) Subject to section 140B proceedings on a complaint within s.120 may not be brought after the end of-
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or
>
> (b) such other period as the employment tribunal thinks just and equitable.
>
> (2) …
>
> (3) For the purposes of this section-
>
> (a) conduct extending over a period is to be treated as done at the end of the period; and
>
> (b) failure to do something is to be treated as occurring when the person in question decided on it.
>
> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something-
>
> (a) when P does an act inconsistent with doing it, or
>
> (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

39. The test for whether conduct constitutes conduct extending over a period of time is that in Commissioner of Police in the Metropolis v Hendricks [2003] ICR 530, CA (endorsed in Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ.154A CA. The focus must be on the substance of the complaint, and the distinction must be drawn between

acts "extending over a period" on the one hand and "succession of unconnected or isolated specific acts" on the other hand.

40. Aziz v FDA [2010] EWCA Civ.304 CA, the Court noted that in considering whether separate incidents form part of an act extending over a period,

> "One relevant but not conclusive fact is whether the same or different individuals were involved in those incidents".

41. The burden of proof for extending time will be on the Claimant. That is set out in Robinson v Bexley Community Centre [2003] IRLR 434, paragraph 25,

> "It is also important to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds, there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."

42. The issues outlined in s.33 of the Limitation Act 1980 are also relevant in considering whether to exercise discretion (British Coal Corporation v Keeble [1997] IRLR 336, paragraph 8:

> "a. the length of and reasons for the delay;
>
> b. the extent to which the cogency of the evidence is likely to be affected by the delay;
>
> c. the extent to which the parties sued have co-operated with a request for information;
>
> d. the promptness with which the plaintive acted once he or she knew of the facts giving rise to the course of action; and
>
> e. the steps taken by the Claimant to obtain the appropriate professional advice once he or she knew of the possibility of taking action."

43. It is correct that the length of and reasons for the delay are of primary importance. However, the list outlined in Keeble need not be slavishly adhered to.

Conclusions on the Issue of Disability

44. As has been said earlier, the Respondents accept the Claimant has a condition, ADHD. What they do not accept is that it amounts to a disability in Law and further that they did not have actual or constructive knowledge of the disability. In other words, the Respondents do not accept that the

Claimant's condition or impairment of ADHD had a substantial adverse effect on the Claimant's normal day to day activities. The Tribunal noted that the Claimant was Ordered to provide an Impact Statement and when the Claimant provided the Impact Statement, she only provided and set out the effects which the impairment had on her ability to carry out her various roles within the Respondents. What she completely failed to do was set out the effect which the impairment had on her ability to carry out normal day to day activities. The Claimant's Witness Statement for this Hearing does not assist the Tribunal in the Claimant describing how her impairment affects her normal day to day activities. Indeed, it is correct that the Respondents wrote to the Claimant explaining to her that the Impact Statement provided was not sufficient and asked for further evidence (page 108 of the Hearing Bundle).

45. Unfortunately, the Claimant who is clearly an intelligent person failed to respond to that request and provide the evidence that was needed. It is also noteworthy that the Claimant has provided absolutely no relevant medical evidence that her impairment has affected her normal day to day activities. The Tribunal reminds itself that the burden is on the Claimant to establish she was a disabled person at the relevant time.

46. The Tribunal are therefore in difficulties in the absence of clear evidence of the effects which the Claimant's ADHD had on her ability to carry out normal day to day activities and therefore cannot properly determine that the Claimant was a disabled person.

47. It is also correct the Claimant throughout the course of this Hearing has either inadvertently or deliberately conflated her various impairments, such as mental health and Dyslexia. The Tribunal is clear that the Claimant's case has always been that she relied on ADHD as her impairment. The Claimant going as far as to suggest panic attacks were a fundamental feature of her ADHD, despite this not being mentioned anywhere in her Impact Statement.

48. In those circumstances the Tribunal could not conclude, on the evidence before it, the Claimant has such an impairment that has an substantial adverse effect on the Claimant's ability to carry out normal day to day activities.

49. Given the above, the Claimant's claims under the Equality Act 2010 must therefore fall to be determined.

50. The Tribunal goes further on the question of actual or constructive knowledge, there is no evidence before the Tribunal that until March 2022 the Claimant explained to Ms Jardine that her ADHD was having an impact on her work, not her normal day to day activities, that it could be said that the Respondents first had actual or constructive knowledge.

51. Therefore any alleged breach of the Equality Act 2010 before that date would fail as well.

Jurisdiction Issue - Time

52. It is clear that the Claimant contacted ACAS on 9 September 2022. The Claimant then received her Early Conciliation Certificate on 12 September 2022. She filed her claim on 8 October 2022. Accordingly, the allegations arising out of events which occurred wholly before 10 June 2022 would be prima facie out of time. We know that the Claimant resigned on 29 July 2022, therefore it is accepted that the constructive unfair dismissal claim is in time.

53. However, in respect of her reasonable adjustments claim, in any event many of the allegations would be out of time, for example:

    a. Being based at Canton within a reasonable time of her request on 23 January 2020;

    b. Induction in September 2019 when the Claimant commenced the Training Officer role;

    c. Returning to Canton in July 2021 when the Claimant made the request;

    d. Provided with questions in advance of the BSM interview in June 2021;

    e. Retaining her laptop during the CTM training course in September 2021;

    f. Additional support during the CTM training course in September 2021;

    g. Provision of additional training on EPCR forms within a reasonable time of the Claimant's request on 18 January 2022; and

    h. Provision of an alternative room for the IRO exam in late March 2022.

54. Therefore the only adjustment that the Claimant advances which is in time is in respect of the provision of an Apple pen in June 2022. The Tribunal take the view that the other claims are not part of continuing acts because various decisions were made by entirely different individuals in circumstances where the Claimant was performing a different role and they were not similar in substance.

55. Furthermore, the Claimant has not advanced any good reason either prior to these proceedings, prior to the Full Merits Hearing, at any stage or during this Hearing, why time should be extended and thus justifying the Tribunal should exercise its discretion. It is true that during the course of her evidence when questioned about why she had not issued a claim

earlier, the Claimant's response was that the issues did not warrant at the time making such a claim.

56. Even if the Claimant had a disability, apart from one of the claims, all the claims are out of time and it not being just and equitable to extend time.

The Facts

57. The Respondent is an NHS Trust employing approximately 8,500 members of staff and provides an Emergency Ambulance Service throughout London.

58. The Claimant was originally employed by the Respondent on 30 July 2005 as a Paramedic. She later became a Trainee Clinical Education Tutor and on 18 February 2021 she became a part time Clinical Education Tutor which led her moving into a role of Band 7 Clinical Team Manager. The Claimant made a Flexible Working Request to her then Line Manager Ms Jardine on 7 November 2021. The Respondents approved this on 11 November 2021 and subsequently the Claimant increased her hours from 12 hours to 15 hours per week, with effect from 3 January 2022 on an annualised hours arrangement.

59. On 31 August 2021 there was an Occupational Health Report which stated the Claimant had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) thirteen years ago and had been prescribed medication. At that time she had stated to Occupational Health she did not require any other adjustments in relation to Dyslexia or ADHD.

60. In fact the Claimant did not flag up that ADHD was potentially impacting on her ability to carry out her role until 10 March 2022 (pages 471 – 473 of the Bundle). As a result of that, Ms Jardine makes a reference to Occupational Health (page 537 of the Bundle) and there was then a Workplace Needs Assessment carried out on 15 June 2022 (pages 549 – 554). It is accepted there was some delay in carrying out this Assessment, this was down to protracted administrative processes which followed various periods of annual leave. Indeed, the Claimant accepted that the delay in conducting the Workplace Needs Assessment was not a factor in her resignation.

61. The Claimant had a number of periods of sickness absence between May 2022 and August 2022, being:

> "Mixed Anxiety and Depressive Disorder."

62. It is true that the Claimant at various points going back to 2021, expressed her doubts about working for the Respondent and indeed, on 23 July 2022 the Claimant had indicated she needed to consider how or if she could indeed continue to support the Respondent (page 712). On 10 March

2022, the Claimant had confirmed she was considering where her future lay (page 472).

63. On 18 April 2022, the Claimant had said that she did not see herself as a Clinical Team Manager. Up to this time, at no stage did the Claimant assert that the Respondents were in some way in breach of any term of the Claimant's contract whether express or implied. The Claimant's comments largely centred around issues of childcare, finance and her own mental health.

64. On 9 June 2022, the Claimant said she was looking to leave the Respondents in the near future, but equally reiterating she enjoyed working with the Respondent and stated (pages 664 – 665) that she,

> "… wanted to stay if possible."

65. The Claimant attended a long term sickness meeting with Ms Jardine, Ms Ofosu-Appiah, her Union Representative and an Administrator taking Minutes. This came about as a result of the Claimant being off work since 10 May 2022. The purpose of that meeting was to discuss what adjustments were required to support the Claimant's return to work. The Claimant was informed by Ms Jardine that the suggestions made in the Workplace Needs Assessment would be fully supported and that an individual rota / increased hours could be accommodated to ensure Miss Hunt received the appropriate training and coaching to assist her full return to full capacity in her role as Clinical Team Manager (page 563 of the Bundle).

66. Miss Hunt advised that she had met with her mental health team recently and felt that her mental health had been impacted by a recent traumatic job, not by her ADHD. Interim counselling was to be arranged to support the Claimant.

67. The upshot of the meeting was that Miss Hunt would return to work the following week undertaking a mixture of home and site based work and all the adjustments discussed during that meeting would be implemented.

68. However, Miss Hunt then resigned by email on 29 July 2022. In her resignation Miss Hunt, for the first time, mentions breaches of contract, lack of support in respect of her change of role and disability discrimination. None of which had previously been mentioned in the meeting with Ms Jardine two days prior.

69. Following the resignation letter the Claimant, in response to Ms Jardine's acknowledgment of the resignation stated,

> "Hi Angela
> Thank you for your response. I totally agree that the meeting yesterday was positive and you were going to do everything to support me to stay. I was just aware of how that will impact the team and still feel like an

inconvenience. This is not your fault and is years of work related situations coming to the forefront for me.

There is nothing that will make me stay on but I would happily meet you when you are back. It's been a hard decision but for the first time in my life I am coming before my job and I need to do this. Have a lovely holiday break.

Kind regards
Nicola.

Conclusions

Reasonable Adjustment

70. Insofar as, if the Tribunal had concluded the Claimant had a condition, namely ADHD, the only claim in time is the provision of an Apple Pen. It is accepted by the Tribunal the Claimant had previously asked for the provision of an Apple Pen and the response had always been that the Claimant could purchase one herself and be reimbursed if Occupational Health or the Workplace Needs Assessment recommended it. What is clear, when it was recommended, it was planned to be implemented but the Claimant unfortunately resigned before that Pen was provided. When the Workplace Needs Assessment was carried out on 15 June 2022 (page 552 of the Bundle), the provision of that Pen was recommended to remove the disadvantage. Therefore the requirement for the Respondent to make reasonable adjustments in relation to the provision of the Apple Pen might have been delayed, but nevertheless was accepted.

Constructive Dismissal

71. This is a case where the Respondent made every effort to accommodate the Claimant's requests. There was support and the Claimant was given every assistance in her various roles. When reasonable adjustments had been recommended by either Occupational Health or the Workplace Needs Assessment, they were implemented. The Respondents, it has to be said, were supportive of every stage of the Claimant's career with the Respondents. A fact that the Claimant, in part, seems to support.

72. The Claimant had been at various times absent and the Respondents had accommodated the Claimant on her return to work. The meeting between the Claimant and Ms Jardine in July to deal with the Claimant's return to work, at which it was hoped the following week the Claimant would return, was clearly a supportive meeting. There was nothing in that meeting that could justify the Claimant claiming this was the last straw that justifies her resigning.

73. If one looks at the Claimant's singular concerns, whether taken in isolation or cumulatively, they cannot amount to or justify the Claimant resigning and claiming constructive dismissal. It is clear the Respondent's actions

were not taken without just cause or good reason, the Claimant had been supported. A fact that the Claimant, the Tribunal repeats, seems to endorse throughout her role.

74. The claim therefore for constructive dismissal is not well founded.

Approved by:

Employment Judge Postle

Date: 29 April 2025

Sent to the parties on: 02/05/2025

For the Tribunal Office.

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/