EMPLOYMENT TRIBUNALS

Claimant: **A Garner**

Respondent: **Thorpe Hall Leisure Limited**

Heard at: **East London Hearing Centre (by CVP)**

On: **28, 29, 30 and 31 January 2025**

Before: **Employment Judge C Lewis**
Tribunal Member K Rose
Tribunal Member B Saund

Representation
Claimant: Mr M Raffell – Employment Litigator
Respondent: Mr A Lewis - Counsel

JUDGMENT having been sent to the parties on 18 February 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

1. By a claim form presented on 20 December 2023, following a period of ACAS early conciliation between 7 September 2023 and 19 October 2023 the Claimant brought claims for wrongful dismissal, denial of the right to be accompanied (s. 10 Employment Relations Act 1999 (the "ERelA") failure to make reasonable adjustments (Ss. 20 and 21 Equality Act 2010 (the "EqA")) and discrimination arising from disability (s. 15 EqA).

2. The claims for failure to allow right to accompaniment, s 10 ERelA 1999 and for wrongful dismissal were withdrawn by the clamant at the end of closing submissions Those claims are dismissed on withdrawal.

3. The claimant's application to admit expert evidence, in the form of a report from a psychotherapist, was refused at the start of the hearing for the reasons given orally.

The issues

4. The agreed list of issues was as follows:

Disability

1. It has been agreed that the Claimant was disabled at all material times due to anxiety (paragraph 14 Particulars of Claim ('PoC')), depression (paragraph 14 PoC) and PCOS (paragraph 16 PoC), and that the Respondent knew, or ought to have known, this at all material times.

2. The Claimant has withdrawn her claim(s) in respect of her alleged heart condition and endometriosis (which the Respondent would otherwise deny).

Discrimination because of something arising from disability contrary to section 15 of the Equality Act 2010

3. Did the Respondent treat the Claimant less favourably because of something arising in consequences of her disability? (EqA 2010, s 15(1)(a)),

3.1. The Claimant relies on the symptoms of her anxiety, depression and PCOS affecting her behaviour,

4. The act of unfavourable treatment was the Claimant's dismissal because of her behaviour on 9 August 2023 (paragraphs 16-18 Grounds of Resistance) which the Claimant argues arose in consequence of her anxiety, depression and PCOS.

5. Can the Respondent show that the Respondent's dismissal of the Claimant was a proportionate means of achieving a legitimate aim? (EqA 2010, s 15(1)(b))

6. Insofar as may be necessary, the Respondent relies on its aims of;

6.1. Conducting a fair and reasonable disciplinary process (paragraph 33.4 Grounds of Resistance ('GOR')

6.2. Preserving the Respondent's reputation and high standard of service towards its guests and customers (paragraph 33.6 GOR)

6.3. Not tolerating unprofessional conduct by staff (paragraph 33.6 GOR)

6.4. Demonstrating to other staff at the Respondent the sort of conduct that is considered unacceptable (paragraph 33.6 GOR)

Failure to Make Reasonable Adjustments

7. Did the Respondent apply a provision criterion or practice (PCP) to the Claimant? (EqA 2010, s 20(3))

8. The Claimant relies upon the following PCP[s]:

8.1. The disciplinary process relating to conduct at work,

8.2. Termination for conduct without medical evidence,

9. If so, did the PCPs cause a substantial disadvantage to the Claimant compared to an able-bodied employee?

10. If so, did the Respondent know, or ought it to have known, that the Claimant was likely to be placed at that disadvantage by the PCP?

11. If so, did the Respondent fail to take reasonable steps to avoid that disadvantage?

12. The Claimant argues that the following steps which would have been reasonable but were not taken by the Respondent:

12.1. Adjusting the conduct at work standards of disciplinary process to issue a lesser penalty to take account of the Claimant's anxiety, depression and PCOS,

12.2. Consider medical evidence in the disciplinary process prior to considering termination for conduct.

Wrongful Dismissal

13. Has the Claimant been paid in lieu of notice?

Section 10 Employment Rights Act

14. Did the Claimant request to be accompanied to her disciplinary hearing?

15. If so, did the Respondent allow the Claimant to be accompanied at her hearing?

Remedy

16. If the Respondent is found to be liable to the Claimant, the Tribunal is asked:

17. What is the Claimant's loss?

Evidence

5. The Tribunal heard evidence from the Claimant and from Sarah Tester, Finance and Operations Director, on behalf of the Respondent. We were provided with an agreed bundle of documents, references in square brackets are to page numbers in the bundle of documents.

Findings of fact

6. The Tribunal made the following findings of fact so far as they are relevant to the issues we had to decide.

7. The Claimant is disabled by virtue of:

   a. Anxiety,

   b. Depression, and

   c. Polycystic Ovary Syndrome ("PCOS").

8. The Respondent operates a four-star hotel and a 'Five Bubble' spa. The Respondent's spa and hotel provide a range of wellness and lifestyle

services, including dedicated fitness, life coaching, nutrition, weight loss, medical, alternative/holistic therapy, and horticulture services tailored to the needs of each guest. The Respondent also has a two AA Rosette restaurant which provides breakfasts, lunches, and dinners for residents and guests at a fine dining standard, usually comprising two or three courses. On average the kitchen prepares 200-350 covers per day.

9. The Respondent's disciplinary policy contains the following relevant provisions:

> **7.4** – '*Employees must make every effort to attend hearings and whilst the Company will make every endeavour to reschedule hearings once where it is genuinely not possible for the employee or their representative to attend, employees will be made aware where failure to attend may result in decisions being reached in their absence*'.
> **10** – '*An employee may be summarily dismissed (i.e. given instant dismissal without notice) only in the event of gross misconduct, as defined below*'.
> **12** – '*The following acts are examples of gross misconduct offences and as such will render employees liable to summary dismissal (i.e. dismissal without notice). This list is not exhaustive…the use of aggressive behaviour or excessive bad language… actions that have resulted in bringing the Company into disrepute*'.
> **13.1** – '*Employees have the right to be accompanied at all formal disciplinary hearings*'.

10. The Respondent's General company rules, contain the following conduct standards:

> '*An orderly and courteous manner must be maintained in front of customers, clients, agents and suppliers and colleagues*'.
> '*Employees are expected to act wholeheartedly in the interests of the Company at all times. Any conduct detrimental to its interests or its relations with its customers, suppliers, the general public or damaging to its public image shall be considered to be a breach of the Company's rules*'.
>
> '*Any personal relationships above and beyond that of a business relationship, which may develop between employees, customers or suppliers and their representatives, are not encouraged by the Company. However, should such relationships develop these are strictly to be kept outside of normal working hours and must not at any time under any circumstances affect work or working relationships. During working hours all relationships must remain on a strictly business and professional level*'.

11. The Respondent also operated a general code of conduct that requires employees to '*act responsibly; treat each other and all parties with respect; abide by all policies, rules and procedures*'.

12. The Claimant was employed by the Respondent as a commis chef. The Claimant was first employed by the Respondent between 13 June to 28 August 2022. She left to take up employment at the Bricklayers Arms pub in Colchester and then returned to the Respondent's employment on 28 November 2022 until her dismissal on 18 August 2023.

13. At an appraisal on 16 February 2023 the Claimant's mood at work was rated as 5 out of 5, despite working in a stressful and busy kitchen environment [CB/83]. However, it was acknowledged that occasionally her mood dipped. Her commitment was described as "very good" "but you could take criticism better' [CB/84]. and under comments/action it was noted there were "some instances of '*finger pointing instead of saying 'Yes chef"*' Areas for action /improvement noted, "take criticism better".

14. It was not suggested, and nor was there any evidence before us on which we could find that the Claimant not taking criticism, or not taking criticism well, arose in consequence of her disability.

15. The Respondent accepted that during her employment the Claimant suffered bouts of ill health including mental health and fainting episodes for which she was occasionally signed off sick. The Claimant disclosed to the Respondent that she suffered from depression, anxiety, and PCOS.

16. Following a period of sick leave from 22 June to 10 July 2023, the Claimant's return to work forms stated that there were no issues that she needed to raise with the Respondent in terms of her work [107] [110]. It was also recorded that she was taking medication and her mental health problems were ongoing.

17. At 17:47 on 9 August 2023, several of the Respondent's staff heard the Claimant's voice loudly swearing. The Claimant was due to start a shift in the kitchen. The Claimant was arguing with Dylan Bolt, with whom she had been in a relationship at the time. Mr Bolt had apparently slept with one of her friends. The argument started in a corridor outside the laundry room near the kitchen. This corridor connects to both the spa reception and an outdoor sunbathing area, both of which are used by guests. This corridor is open plan with hard walls and floor, we accept that the sound echoes, and the door to the spa reception is open during the summer months. The Claimant was heard shouting 'fuck' and 'cunt' at Mr Bolt by numerous staff and guests, including in the spa reception.

18. The argument continued into the outdoor loading bay area next to a sunbathing area used by guests, where the restaurant manager, Jean Mercure, intervened. The head chef took Mr Bolt into changing and room and Mr Mercure sat with the Claimant in reception and calmed her down.

19. On 10 August 2023, Sarah Tester was informed that several guests had complained about the Claimant's shouting the day before: it was reported to her that guests had come out of the spa to ask if something had happened, and a further guest had made negative remarks when checking out. Due to the seriousness of the conduct and its implications for the Respondent's reputation, Ms Tester asked Ugo Simonelli to conduct an

investigation with the assistance of Park City, the Respondent's HR consultants.

20. Mr Simonelli collected statements from members of staff who had witnessed or overheard the incident. The statements included the following accounts:

> "*We heard a lot of shouting and swearing which was coming from the corridor outside the laundry and continued outside on the loading bay*" [111];
>
> "*I could hear shouting and swearing… The swearing from the female could be heard in the spa reception areas. The female member of staff was saying 'you fucking made me love you then you cheated on me you cunt', the male member of staff was saying 'I'm not fucking doing this now' and she replied 'fuck off then'. They carried on the argument and went outside to the loading area*" [112].
>
> "*Abbie and Dylan was in the loading bay area just talking when voices started raising… Abbie started shouting to Dylan and was walking towards the car park still screaming and shouting that is when I told the pair of them that they should stop this as guest could potentially hear them. They then carried on talking walking back into the building and it all began again… I told him to avoid Abbie… She was obviously angry and screaming and shouting but the language used and the shouting was not acceptable*" [113].

21. The Claimant's case was put on basis guests did not or would not have heard her shouting. We are satisfied that is not realistic. We have been taken to photographs of the layout of the relevant areas and are satisfied that the argument or shouting was within earshot of public areas, including the guests' sunbathing area.

22. Mr Simonelli consulted with Park City, who agreed that the Claimant's behaviour potentially amounted to gross misconduct under the Disciplinary Policy. Park City advised that dismissal was an option given the behaviour, but that any decision should be left until after a disciplinary hearing [114-115].

23. On 15 August 2023, Ms Tester sent the Claimant a letter inviting her to a disciplinary hearing on 18 August 2023 at 14:30 [117-118]. The invitation letter provided the Claimant with the following information:

> She was being investigated for allegations of gross misconduct – '*these allegations are in relation to a very public argument you had with a colleague which several of your colleagues overhead. We also expect that this was overheard by quite a few guests considering the alleged volume of this argument*'.
>
> The forms of gross misconduct were (i) the use of aggressive behaviour and excessive bad language, and (ii) actions that have resulted in bringing the Respondent into disrepute.

'*in view of the gross misconduct nature of the allegation, you are advised that the outcome of the Hearing may be summary dismissal*'. '*if you have any documentation or other evidence that you wish to be considered as part of the hearing please ensure that I am supplied with copies at the earliest opportunity*'.

24. The invitation letter also explained that the Claimant was '*entitled to be accompanied at the Hearing by a work colleague or Trade Union Representative*' and asked her to inform Ms Tester if she wished to exercise this right.

25. The Claimant told us she had not fully read the invitation letter. She did not prepare for the disciplinary hearing, nor did she make a request to be accompanied at the disciplinary hearing. It was not suggested that the failure to do so arose from her disability. The Claimant told us that it had not occurred to her to email any documents including any medical documents Ms Tester.

26. On 18 August 2023, the Claimant failed to attend the disciplinary hearing at the scheduled time. Ms Tester telephoned the Claimant in the kitchen to remind her of the hearing and the Claimant replied '*yes, I know*'. The Claimant told Ms Tester that she needed to be in the kitchen to supervise an inexperienced staff member while others were outside on breaks or smoking. Ms Tester told the Claimant that she had been informed of the time and date of the hearing and should have made arrangements so that she could attend on time. The Claimant found someone to cover for her and attended the disciplinary hearing.

27. Ms Tester noted that the Claimant did not apologise for her lateness on arrival. Ms Tester formed the view that the Claimant's general demeanour gave the impression that she would not have attended had she not been called.

28. During the Disciplinary Hearing, according to Ms Tester [119-121]:

    a. The Claimant only admitted to reading the Invitation Letter '*briefly*'.

    b. The Claimant denied being aware of the Hearing despite having confirmed she knew she was late to the Hearing over the phone.

    c. The Claimant admitted to shouting and swearing on 9 August 2023.

    d. The Claimant admitted that her behaviour was completely unacceptable for the workplace.

    e. When asked about the incident she responded by asking whether Mr Bolt was facing disciplinary action.

    f. The Claimant stated that she wanted Mr Bolt to face disciplinary action.

g. The Claimant blamed Mr Bolt for her behaviour.

h. The Claimant said '*what else do you need from me I have apologise*'. When asked about this in cross-examination the Claimant stated that she can't keep on apologising.

i. The Claimant did not apologise for her behaviour.

j. The Claimant refused to recognise the impact of her behaviour on the Respondent, downplaying it as '*little*' impact.

k. The Claimant failed to raise any mitigating factors or to submit any evidence, despite the explicit invitation to do so in the Invitation Letter.

l. The Claimant did not refer to her disabilities as relevant to her behaviour or at all.

29. The minutes of the hearing indicate that it lasted only 9 minutes. We accept Ms Tester's evidence that this was because of the nature (abruptness) of the Claimant's responses to her questions. We accept Ms Tester's account of the meeting as being accurate overall but also find that the Claimant did inform Ms Tester that she had apologised to James (the Head Chef) and asked Ms Tester if she had a statement from James. She also told Ms Tester that she had apologised [to Dylan] and acknowledged that they had to be able to work nicely together. We accept that at the end of the meeting the Claimant said to Ms Tester, *" I have apologised, what else do you want?"*

30. We find that before the disciplinary meeting Ms Tester was of the view that the meeting would probably end with her giving the Claimant some sort of warning rather than dismissal [115], however as a result of the Claimant's conduct in the disciplinary hearing she decided that dismissal was the appropriate sanction.

31. We find that Ms Tester formed the genuine view that the Claimant refused to take responsibility for her actions, pointed the blame at Mr Bolt and demanded to know how the Respondent was dealing with him. Ms Tester formed the belief that the Claimant's attitude during the Disciplinary Hearing showed a total disregard for the Respondent's disciplinary procedures and displayed no remorse. Given the Claimant's attitude, Ms Tester did not think that a warning would have any effect on her behaviour, and, Ms Tester told us, that she had no reason to believe that the Claimant would improve her behaviour in the future. She concluded that the Claimant's continued employment posed a risk to the Respondent's reputation. After consulting with her HR adviser Ms Tester decided that dismissal was the appropriate sanction. Ms Tester believed that the Claimant had committed serous misconduct, she decided to dismiss the Claimant with payment in lieu of notice. Ms Tester told us other staff would not be told the outcome and it was confidential.

32. We have found that the Claimant did seek to minimise the seriousness of the incident; she did not accept that guests or customers had heard her shouting or that there were complaints; she also sought to point the blame on Mr Bolt and appeared more interested in whether he was also being disciplined than in the effect on the Respondent's guests and reputation.

33. On 22 August 2023, the Claimant was sent a letter confirming her dismissal and informing her of her right to appeal the decision [124]. The outcome letter informed the Claimant that if she wished to exercise her right to appeal, she should write to Mr Simonelli within five working days.

34. On 25 August 2023, the Claimant wrote to Mr Simonelli saying she was appealing [125]. On 25 August 2023, Mr Simonelli replied to the Claimant, asking her to confirm the grounds on which she was appealing and to provide the necessary information and evidence by 29 August 2023. On 26 August 2023, the Claimant replied that she was waiting for legal advice and would be in contact after the bank holiday, which was the following Monday.

35. On 6 September 2023, Mr Simonelli wrote to the Claimant stating that:

    a. The Claimant had failed to submit her grounds of appeal;
    b. to avoid delay, an appeal hearing was being scheduled for 13 September 2023 (albeit it was incorrectly stated as 13 August);
    c. the Claimant was advised to bring a work colleague or Trade Union Representative to accompany her at the appeal hearing.

36. The Claimant had moved address and did not receive the letter which was sent by post and not by email.

37. On 13 September 2023, the Claimant failed to attend the appeal hearing. The Respondent proceeded in her absence, which was in line with its Disciplinary Policy. On 22 September 2023, the Respondent sent the Claimant a letter with the outcome of the appeal hearing, confirming her dismissal.

Something arising from the Claimant's disability.

38. The Claimant relies on the combined effect of symptoms of irritability, anger and mood swings arising from her disabiliities of depression anxiety and PCOS. We did not admit the psychotherapist's report for the reasons given orally on day 1 of the hearing. The Respondent had conceded the Claimant was disabled in respect of three conditions. The Claimant relies on her conduct on 9 August (the incident) and 18 August (her abrupt responses in the disciplinary meeting) as things arising from her disability, namely an inability to regulate her mood or control her anger due to her disabilities.

39. The Respondent accepted that dismissal was unfavourable treatment and that she was dismissed for her conduct on 9 August and 18 August [Respondent's written submissions para 34] but disputed that her behaviour on either 9 August or 18 August was something arising in consequence of her disabilities.

40. We are satisfied that we are able to make findings on the evidence before us as to whether on the balance of probabilities the conduct relied on arose from her disabilities. We were referred to the Claimant's medical notes, including notes from 2017-2018 in relation to depression and related symptoms which included feelings of anger and irritability[207, 208 and 209], and the Claimant's Disability Impact Statement, in particular but not limited to paragraphs 20 and 27. We find that the Respondent has quoted selectively from the medical notes and we are satisfied that on a fair reading they do give a picture of someone whose mental health /depression impacts on their abilitiy to control their feelings of anger.

41. The Claimant has had symptoms of depression since she was a pre-teen and her ADHD assessment also pre dates the diagnosis of depression. We are satisfied that the Claimant's inabiltiy to control her anger did arise in consequence of her disability. It was not part of the Claimant's case and nor was there any evidence before us to suggest that either the Claimant's failure to acknowledge the seriousness of the incident, or her deflection of responsibility or not taking responsibility for her actions arose from her disabilities and we do not find that either were something arising from her disabilities.

Conduct in the disciplinary meeting

42. The Respondent relies on following:

a) *The Claimant failed to attend the Disciplinary Hearing, relying on the excuse of (and blaming the Respondent for) having no one to cover her despite easily finding someone to do so when called by Ms Tester*. We do not find this is an entirely accurate portrayal, the Claimant she did attend but was late.

b) The Claimant showed disdain for the Respondent's disciplinary process, failing to engage properly in the Hearing and instead demanding to know how the Respondent was dealing with Mr Bolt.

c) The Claimant sought to downplay the seriousness of her actions and their impact on the Respondent, asserting that her behaviour only had a little impact.

d) The Claimant failed to take responsibility for her actions in the Disciplinary Hearing, blaming Mr Bolt instead.

e) *The Claimant failed to show remorse for her actions in the Disciplinary Hearing, saying* '*what else do you need from me I have apologise [sic]*' [CB/120]. We have fund that the Claimant did say she had apologised – she said this 3 times in the course of the hearing – she did not however repeat an apology to Ms Tester or acknowledge the potential damage to the Respondent's reputation.

43. We accept Ms Tester's evidence that the disciplinary meeting only lasted 9 minutes because of the abruptness of the Claimant's responses. We note that the minutes show that when Ms Tester asked the Claimant if there was anything else she wanted to say, the Claimant said she had apologised [to Dylan], she also said "I have apologised - what else do you want?"

44. The Claimant's case before us was put on the basis that the Respondent's guests did not, or would not have, heard her shouting. We are satisfied that is not realistic. We have been taken to photographs of the layout of the relevant areas and are satisfied that the argument or shouting was within earshot of public areas, including the guests' sunbathing area. We also accept that there were reports made by guests to Reception about the shouting.

45. We have found that the Claimant did not acknowledge the seriousness of the incident, she sought to minimise it and did not accept that customer's had heard the shouting or that there had been complaints. She also sought to point blame to Mr Blunt and appeared more interested in whether he was also being disciplined. We find that this was in stark contrast to Mr Blunt's responses where he acknowledged the seriousness of the incident, accepted his responsiblity in it and acknlwodged and aplogised for the detrimental impact on the Respondent's business. The Respondent pointed to the Claimant's previous record of not accepting responsibilty when criticised.

46. It was not suggested to us and there was no evidence before us to show the Claimant's failure to acknowledge the seriousness of the matter and her not taking responsiblty for her actions arose from her disabilities. We do not find that the conduct in the disciplinary meeting on 18 August relied on by the Respondent in reaching its decision to dismiss the Claimant arose in consequence of her disabilities.

47. We accept Ms Tester's evidence that she concluded, given the Claimant's attitude, namely her refusal to acknowledge the seriousness of the incident and to accept responsibility for her part in it, a warning would have been of no use as the Respondent had no reason to believe that the Claimant would improve her behaviour in the future [WS/21/20]. The Respondent had no comfort that the Claimant would not behave similarly in the future and Ms Tester concluded that the Claimant's continued employment posed a risk to the Respondent's reputation. Ms Tester told us other staff would not be told the outcome and it was confidential.

Relevant law

48. The relevant law has been helpfully set out in the Respondent's written submissions. Paragraphs 29 – 32 address s 15 EqA which itself provides that:

> *(1) A person (A) discriminated 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.

49. The duty to make reasonable adjustments arises under ss. 20 and 21 EqA. We were referred to the following provisions in Counsel's written submissions [Written Submissions paras 42 -46]:

20(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…

21(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustment)s

Sch. 8 para. 20(1(b) EA:

A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at a disadvantage referred to in the first, second, or third requirement.

Conclusions

Section 15 – unfavourable treatment because of something arising in consequence of disability

50. We have found that the Claimant's inability to control her anger and her abruptness in the disciplinary meeting both arose in consequence of her disability. It was not disputed that being dismissed amounted to unfavourable treatment. The Respondent relied on the following justitfication:

1. Conducting a fair and reasonable disciplinary process;
2. Preserving its reputation and high standard of service towards its guests and customers;
3. Not tolerating unprofessional conduct by staff;
4. Demonstrating to other staff as R that sort of conduct that is unacceptable.

51. It was not disputed that those are all potentially legitimtate aims. We have not found on the evidence that the Respondent was pursuing aim 4: Ms Tester told us that other staff were not going to be told reason for the Claimant's dismissal. We do find however that the Resopndent was pursuing the legitimate aims at 1 in seeking to conduct a fair and reasonable disciplinary process and specifically its aims at 2 and 3, preserving its reputation and high standards of service and not tolerating unprofessional conduct by staff.

52. Was the Respondent's action in dismissing the Claimant justified? This is a balancing exercise; we considered whether there was a less discriminatory way of achieving the Respondent's aims. The Claimant submitted that other possible options were open to the Respondent, i.e holding a meeting between the Claimant and Mr Bolt, to address their conduct and obtain assurances as to future conduct; and/or giving the Claimant a warning. We considered whether those would achieve the Respondent's aims.

53. We found that the Claimant did minimise her conduct and its effect on guests and on the Repondent's reputation, she did not accept customers had heard her shoutng an swearing or that there were complaints. We have also found that the Claimant's lack of acknowledgement of the seriousness of the incident and her deflecting blame on to Mr Bolt did not arise from her disabilities. In the circumstances we accept the Respondent could not be not satisifed that a lesser sanction or alternative measure would ensure that the conduct or similar incidents would not happen again. After carefully considering the balancing exercise we have concluded that the Respondent was justified in dismissing the Claimant in pursuit of its legitimate aims 2 and 3.

Failure to make reasonable adjustments

PCPs
8.1 the disciplinary process
8.2 termination for conduct without medical evidence

8.1 Disciplinary process

54. The Claimant relied on the disciplinary process or more specifically not holding a investigatory meeting before the disciplinary hearing as a PCP. We find on the evidence from Ms Tester that the same process was followed for Mr Bolt. We find there was a practice which was applied to Claimant and which amounts to a PCP.

8.2 termination without medical evidence

55. We are satisfied on the evidence given by Ms Tester that it was the Respondent's usual practice not to request medical evidence in a disciplinary where this was not raised by the employee as being relevant or where it does not consider the relevant conduct to have been affected by a medical condition. We find that this was applied to the Claimant and would apply to others.

Substantial disadvantage

56. The substantial disadvantage the Claimant relied on was the same for both PCPs, namely not being able to present information about her conditions and their impact which meant that those were not considered.

57. We are satisfied that Ms Tester was aware that the Claimant's behavior was unusual and she was also aware that the Claimant had recently

returned to work after period of poor mental health and was on anti-depressant medication. We find that the Respondent was on notice that there may be some underlying, or contributory, cause for the Claimant's behaviour and a possible explanation which required investigation.

58. We are satisfied that the Claimant was put at a substantial disadvantage compared to someone without her disability by the second PCP. We have found that the Claimant's conduct on 9 August and her abruptness at the disciplinary hearing on 18 August were contributed to by something arising from her disabilities.

Reasonable adjustments

59. We are satisfied that it in the circumstances it would have been a reasonable adjustment for the Respondent to have sought medical evidence. We find that there was a reasonable prospect this could have led to a different outcome, i.e. the Claimant coming back to work. Ms Tester told us in evidence that if she had known then what she know knows about the Claimant's disabilities and their effect then she might have considered obtaining medical evidence or a different outcome.

60. We were referred to by Respondent' Counsel to *Gomez v GlaxoSmithKline Services ET case no. 2353401/09* – which we distinguished on the basis that Mr Gomez' conduct was more serious and he was found to have been manipulative and self-pitying; we do not find those elements present here. We reminded ourselves that considerations of reasonable adjustments are fact sensitive and objective.

Remedy

61. After giving our oral judgment on liability we went on to hear submissions on injury to feelings and the likelihood that the Respondent would have dismissed the Claimant if it had a medical report.

Likely effect of making the adjustment

62. We considered the guidance in *Abbey National plc v Chagger [2010] ICR 397 CA* in reaching our decision on appropriate remedy. Given the Claimant's continued downplaying of the seriousness of her conduct in her witness statement, continuing to dispute that her shouting and swearing could be heard and had any impact on customers, we find that the Claimant would have continued to fail to take responsibility for her actions and acknowledge their seriousness at any later disciplinary meeting. We therefore find that the there was an 80% chance the Respondent would still have decided to dismiss the Claimant once the medical evidence had been taken into account which would have been a non-discriminatory dismissal after the reasonable adjustment had been made.

Loss of earnings

63. We find that it was likely to have taken 4-6 weeks to obtain a report and a further week to arrange and hold the disciplinary meeting. This would delay

the decision on dismissal by 5 to 7 weeks. We have awarded the Claimant's full loss after mitigation for the period of 7 weeks from her dismissal. We have awarded 20 % of her losses for the remaining period. The Claimant does not claim any losses after 26 March 2024.

64. We are satisfied that the Claimant took reasonable steps to mitigate her losses. She started a new job at a chip shop before the end of notice period. She left the chip shop because it was not safe for her to work there due to the risk of seizures. She then found work in a caravan park on 26 March 2024 which replaced her lost earnings. We also accept that the Claimant's health meant that it was reasonable for her to only work part time in the chip shop. We do not find that it would have been reasonable for the Claimant to have taken a job requiring her to travel by train, again due to the risk of seizures.

65. The Claimant was dismissed on 18 August 2023. After mitigation her loss in the 7 week period to 6 October 2023 is £150.00 (3 x £50.00 per week). Her loss of income between 6 October 2023 to 23 March 2024 was £4788.80, we have awarded her 20% of her loss for that period which is the sum of £957.76. The total award for financial loss is therefore £1107.76 (£150.00 plus £957.776).

Injury to feelings

66. We considered the April 2023 Vento bands as they were the relevant Vento bands applicable at the date the claim was presented. The top of the lower band / bottom of the middle band was £11,200.

67. The Claimant was seeking an award in the middle band. We are satisfied that not all of the injury to feelings described by the Claimant results from the discrimination we have found, however a substantial part of the injury to feelings described does relate to the Claimant's dismissal. We reminded ourselves of the guidance in *O'Donoghue v Redcar& Cleveland Borough Council [2001] IRLR 615 CA* that having established that dismissing the Claimant without obtaining a medical report was an act of discrimination, it is not open to us to reduce the injury to feelings award to reflect the likelihood that the Claimant would have been dismissed in any event. We have award the sum of £11,000 to reflect the injury to the Claimant's feelings as a result of the discrimination found.

Remedy summary

68. We made the following award in respect of the successful claim of failure to make reasonable adjustments:

    1. Financial loss: £1107.76 net

    2. Injury to feelings award in the sum of £11,000.00

    Interest under the Employment Tribunals (Interests on Awards in Discrimination Cases) Regulations 1996

3..1 Interest on the financial loss in the sum of £60.70; £0.24 per day, being 8% on the sum awarded, for 250 days, calculated from the mid-point between 18 September 2023 to 31 January 2025;

3.2 Interest on injury to feelings award at 8% in the sum of £1287.00; calculated as follows 8% on the sum awarded for 534 days from 18 August 2023 to 31 January 2025, at £2.41 per day.

Grand total award including interest

69. The grand total of our award is **£13, 455.91** to be paid by the Respondent to the Claimant.

Employment Judge C Lewis
Dated: 9 May 2025