Neutral Citation Number: [2025] EAT 132

Case No: EA-2024-000643-NK

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date:16 September 2025

Before :

SARAH CROWTHER KC
DEPUTY JUDGE OF THE HIGH COURT

- -

Between

MR GOLAM CHOWDHURY

Appellant

-and-

NETWORK RAIL INFRASTRUCTURE LIMITED

Respondent

- -
- -

Mr Golam Chowdhury the Appellant appeared In Person
Mr O Holloway (instructed by Dentons UK & Middle East LLP) for the **Respondent**

Hearing date: 2 September 2025

- -

JUDGMENT

SUMMARY

DISABILITY DISCRIMINATION

1. The Tribunal took the correct approach when determining the Claimant's claim that reasonable adjustments in respect of his disability ought to have included redeployment (with or without training) to alternative roles within the Respondent's organisation or further time to obtain a suitable alternative role. It directed itself correctly as to the law and reached conclusions open to it on the evidence and in light of the primary facts as it had found them to be.

2. Challenges to findings by the Tribunal as to what would have happened had the Respondent asked helpdesk staff to swap jobs with the Claimant were subject to the same threshold as challenges to primary fact and would require the EAT to be satisfied that no reasonable Tribunal could have reached the same conclusion in order to succeed. The challenge in this case does not meet that threshold and the findings of the Tribunal were supported by its other conclusions on the facts and well open to it on the evidence.

3. The Tribunal was entitled to refer back to its findings in respect of reasonable adjustments when considering the claim under section 15 Equality Act 2010, because on the case as alleged, the questions of proportionality and justification engaged materially identical considerations to the reasonable adjustments case. There is no error of law in the Tribunal's decision not to repeat itself.

SARAH CROWTHER KC, DEPUTY JUDGE OF THE HIGH COURT:

INTRODUCTION AND BACKGROUND

1. This appeal is brought by Mr Chowdhury (to whom I shall refer as the Claimant) against the decision of the Tribunal (EJ Curtis sitting with Mrs Jerram and Mr Turley) at London South Employment Tribunal in which it dismissed his claims of discrimination arising from a disability and failure to make reasonable adjustments in a decision sent to the parties on 11 January 2024.

2. The facts of the case can be shortly stated. The Claimant commenced employment as a Customer Service Assistant or CSA, at London Bridge Station on 31 March 2020. The role was 35 hours a week contractually, (although together with overtime he was required to work on average nearly 36 hours a week). His main duties were to patrol the station, carry out security checks, report suspicious behaviour and help customers. Occasionally, he would work on the Help Desk answering customer queries and providing information to customers. The Tribunal found that all CSAs were required to perform all these tasks, although 8 of them were principally assigned to the helpdesk, which was seen as a desirable role, because the work was indoors and had a favourable shift pattern.

3. The Claimant suffers from plantar fasciitis, an inflammatory condition of the muscles of the feet which is difficult to treat, and which affects mobility because it can be painful to stand or walk for long periods of time. Shortly after he started his employment, he suffered a recurrence of his symptoms and was absent from work. He was placed on the helpdesk as an interim measure. After another period of absence, the Claimant was placed on the Respondent's redeployment register. The Claimant commenced absence again in October 2020 until April 2021. The totality of the medical evidence was that both occupational health advisors and the Claimant's treating clinician considered him unfit to carry out his contractual role from July

2020 until his dismissal, although the position improved a little such that by July 2021 it was considered by the medical experts that he was fit to carry out a mainly sedentary role on a part-time basis. After a series of capability meetings in early 2021, he was given notice of a decision to dismiss on grounds of capability which took effect on 25 August 2021.

4. Prior to his dismissal the Claimant applied for 3 roles within the Respondent: stores co-ordinator, document controller and HR administrator. His claim in respect of reasonable adjustments before the Tribunal was that he ought to have been redeployed by the Respondent into one of these roles, alternatively into a receptionist role for which he did not apply or into a helpdesk role, by 'bumping' one of the other staff members. Alternatively, he claimed that the Respondent ought to have given him longer to find redeployment before deciding to dismiss or given additional training or support with job applications or permitted him to work split shifts. He also contended that the decision to dismiss arose in consequence of his disability and was not proportionate to the Respondent's accepted legitimate aims of ensuring that employees are capable of carrying out their role and attend work.

5. The Tribunal provided written reasons sent to the parties on 12 April 2024 in which it set out its findings following a request by the Claimant. In summary, the Tribunal found that the Claimant was disabled and that the Respondent ought to have been aware of that fact from about August 2020. It made criticisms both of the Claimant's engagement with and the Respondent's management of the redeployment programme. It found that the duty to make reasonable adjustments in respect of the Claimant's disability during the redeployment search was engaged. However, it rejected appointment to each of the alternative roles as reasonable adjustments on the basis that the Claimant did not meet the essential criteria as well as the Claimant's case that the decision to terminate ought to have been deferred as a further reasonable adjustment. It made findings that the Claimant's case regarding training was too

vague and that it was not satisfied that training would have made up for the lack of essential competence for the roles. It then concluded that the decision to dismiss was proportionate because any potential lesser measure had already been addressed in the reasonable adjustment claims.

6. By a notice of appeal dated 24 May 2024, the Claimant raised 6 Grounds of Appeal, which were settled by Counsel who had represented the Claimant before the Tribunal, Mr Nicholas Toms. Those grounds challenge the findings in relation to reasonable adjustments (Grounds 1 – 5) and then challenge the Tribunal's conclusion that proportionality stood or fell with the reasonable adjustment claims (Ground 6). Mr Holloway appears, then as now, for the Respondent.

AMENDMENT OF THE GROUNDS OF APPEAL

7. In his skeleton argument, Mr Chowdhury, who now appears before me in person, seeks to advance two further Grounds of Appeal. The discretion to permit amendments to grounds of appeal to be raised which bring new arguments not advanced before the Tribunal should not be taken lightly and a material factor for consideration is whether further or alternative findings of fact of the Tribunal would have been necessitated by the new points raised.

8. No formal application has been made to amend the Notice or Grounds of Appeal. Bearing in mind that Mr Chowdhury now appears in person, I am prepared to approach the case as if such a formal application had been made, because Mr Holloway has been able to deal with it on the Respondent's behalf. I do not give permission for these Grounds to be added because they do not raise any arguable error of law on the part of the Tribunal, and it would be unfair to the Respondent to permit the new points to be raised at this stage.

9. First, the Claimant seeks to add a claim in respect of unfair dismissal and/or race discrimination. At no stage of this claim has the Claimant ever intimated an unfair dismissal or race discrimination claim. It has formed no part of any evidence, list of issues, pleaded case and has never been mentioned before. Any such claims would be considerably outside the time limit period in the relevant statutory provisions, and no evidence is before me as to any extension of time. It would be wholly unfair to permit the Claimant to bypass the trial stage of proceedings and to include completely new claims on appeal.

10. Secondly, the Claimant seeks to add a further Ground of Appeal in relation to his reasonable adjustment claim in respect of the receptionist role. This issue was raised at the Tribunal, and its findings are at [69] – [74] of its written reasons. The Tribunal accepted the Claimant's case that the Respondent failed to apply the terms of its own redeployment policy in that it ought to have identified this role as being one for which the Claimant was suitable to be appointed in terms of skills and expertise. It was critical of the Respondent's passivity in the redeployment search. However, it found that the Claimant was unable at the relevant time (February-March 2021) to carry out full time shifts and therefore that it was not reasonable for the Respondent to have appointed him to that role, notwithstanding the fact that the Tribunal accepted that he met the essential criteria for the post. The key finding of the Tribunal which illustrates why any exercise of discretion by me as the Appeal Tribunal to permit the point now to be run is at [73],

> "At no point did the Claimant suggest to us that it would have been a reasonable adjustment for him to be redeployed to the receptionist role on a part-time basis. We heard no evidence as to whether it would have been practical to appoint the Claimant to the receptionist role part-time. That was not the way that we understood the Claimant was putting the case."

11. In fact, in his submissions to me today, the Claimant sought to suggest that in fact the Tribunal ought to have found that he was fit to work full-time in a sedentary role in February or March 2021. However, that way of putting the case, which again does not appear to have

been raised before the Tribunal, has the further problem runs headlong into the Tribunal's unchallenged findings of fact at [33] and [34] that the unanimous expert opinion was that the Claimant was unfit to work until about July 2021 when he became able to carry out a mainly seated role but even then only on a part-time basis. This is not a reasonably arguable ground of appeal, and I would refuse to allow amendment on that basis alone.

12. Moreover, in circumstances where the Claimant was represented by experienced solicitors and counsel throughout the Tribunal proceedings, I can only infer that the Claimant's choices as to how to run his case were taken having received professional advice. It has not been suggested to me that the Tribunal was wrong in its understanding of how the case was being run. In my judgment it would be prejudicial to the Respondent to permit the Claimant to use this appeal to change his case at this late stage. It would effectively deprive the Respondent of its opportunity to advance evidence relevant to the issue.

GROUNDS 1, 2 and 3

13. Grounds 1 and 2 are materially identical, but Ground 1 relates to the document controller role and Ground 2 to the HR administrator role. Both parties presented their cases on the basis that these Grounds raised the same issues of law and fact. It is more sensible for me to address these Grounds together, because they all relate to different aspects of the same parts of the Tribunal's reasons.

14. Closely linked to Grounds 1 and 2 is Ground 3. By this Ground, the Claimant argues that the Tribunal erred in deferring to the Respondent's assessment of whether he was suitable for alternative roles and whether any of the proposed adjustments were therefore reasonable.

15. In the written grounds, reference was made to the burden of proof provisions, and it was suggested that the Tribunal had misapplied them. However, this point was not actively

pursued by the Claimant in his oral submissions. In any event, the Tribunal self-directed appropriately that a reasonable adjustments claim was subject to the provisions of section 136 Equality Act 2010. As none of its findings in any event turned on the burden of proof, I do not propose to say more about this issue.

16. The Claimant's case has evolved about what adjustments ought to have been made by the Respondent to allow him to be appointed to the alternative roles at different stages of the proceedings, both before the Tribunal and on this appeal. In his oral submissions, he suggested that the Tribunal ought to have: -

(i) found that it was unreasonable to consider the criteria essential.

(ii) disapplied some or all the essential criteria for each of the roles in the Claimant's case.

(iii) offered training or a trial period in the role as means of overcoming or bypassing the essential criteria.

17. In his reply and by reference to his up-to-date CV, which obviously the Tribunal did not have before it, the Claimant further made submissions to the effect that, insofar as the essential criteria related to IT skills, in particular experience of using Microsoft Office software, the Respondent (and the Tribunal) were wrong to have assessed him as lacking those skills.

18. The question of reasonableness of proposed adjustments has long been understood to be a question of fact for a tribunal to determine, based on its evaluation of the evidence, see, for example, **Archibald v Fife Council** [2004] ICR 954, per Lord Hope at [13],

> "The question comes to be whether there were steps which the council could have taken by way of adjustment to the conditions of her employment to remove the disadvantage which she was under because she was at risk of dismissal because she was unable to do the job she was employed to do because of her disability."

19. As Lord Rodger stated, [43], the answer to that question, 'all depends on the circumstances'…what steps are reasonable depends on the circumstances of the particular case, which the employment tribunal must establish,' and as Baroness Hale stated at [62], 'job descriptions for all [the employer's] posts are "arrangements" which they make in relation to the terms, condition and arrangements on which they offer employment."

20. More specific guidance to tribunals in respect of reasonable adjustment cases where suitability for an alternative role is in issue was given, after the date of the Tribunal's decision in this case, by HHJ Auerbach in **Rentokil Initial UK Ltd v Miller [**2024] ICR 873 at [50]-[52],

> "50. First, in every case, whether the employer ought reasonably to have put the employee into a given role, whether on a trial basis or not, is an objective question for the appreciation of the tribunal based on the facts found by it, drawing upon all of the evidence presented to it. It is not bound to defer to the view of either the employer or the employee.
>
> 51. Secondly, that said, plainly a usually relevant consideration for the tribunal will be whether the employee met essential requirements of the role, in terms of skills, qualifications, knowledge, experience, or otherwise. If the employer contends that the employee did not do so, and presents evidence, such as the results of a test or assessment process that it carried out, in support of its case, that is evidence that should be carefully considered and weighed by the tribunal, bearing in mind also that the issue, while a matter for the tribunal's objective determination, is whether this employer ought reasonably to have put this employee (on a trial or not) into this role. What is reasonable is also to be judged by reference to the facts as they stood, and information that was available, at the relevant time when the decision fell to be taken.
>
> 52. The tribunal may, in a given case, be satisfied by such evidence that it would not be reasonable in all the circumstances to have expected the employer to have put the employee into that role, even on a trial basis. Wade was such a case. The employee did not narrowly miss being appointed to the role but was found wanting under the majority of eight essential criteria (para 19). Unsurprisingly the tribunal concluded that the employer's decision that the claimant was not appointable was genuine and one which they were entitled to reach (para 15) and the EAT upheld that decision. But it is not the law that in every case the tribunal must defer to the employer's view. The tribunal should properly take the evidence, which is said to support it, into account, and give it due weight. But, having done so, it may nevertheless conclude, on all the evidence available to it, and facts found, that the employee should reasonably have been given the role, or at least a trial in it."

21. It follows from this, that the role of the appeal tribunal, when asked to consider the Tribunal's assessment of whether an employee ought reasonably to have been put into a role as an adjustment in light of the employee's disability, is in effect being invited to review the Tribunal's evaluation of the evidence (see Miller at [44]). It is appropriate therefore for the EAT to bear in mind the summary of the previous caselaw provided in **A v Choice Support (Formerly Mach Ltd)** [2022] EAT 145, at [19] – [24], in particular that the decision of the Tribunal must be read 'fairly as a whole without focussing merely on individual phrases or passages in isolation and without being hypercritical (**DPP Law v Greenberg** [2021] IRLR 1016). In that case at [58] it was held that,

> '[…] where a tribunal has correctly stated the legal principles to be applied, an appellate tribunal or court should, in my view, be slow to conclude that it has not applied those principles and should generally do so only where it is clear from the language used that a different principle has been applied to the facts found. Tribunals sometimes make errors, having stated the principles correctly but slipping up in their application, as the case law demonstrates; but if the correct principles were in the tribunal's mind, as demonstrated by their being identified in the express terms of the decision, the tribunal can be expected to have been seeking faithfully to apply them, and to have done so unless the contrary is clear from the language of its decision. This presumption ought to be all the stronger where, as in the present case, the decision is by an experienced specialist tribunal applying very familiar principles whose application forms a significant part of its day-to-day judicial workload."

22. A tribunal is not required to identify all evidence relied on in reaching its conclusions of fact or express every step of its reasoning in greater detail than required. In particular, it is therefore (**Choice Support** at [19]),

> 'Not legitimate for an appellate court or tribunal to reason that a failure by an employment tribunal to refer to evidence means that it did not exist, or that a failure to refer to it means that it was not taken into account in reaching the conclusions expressed in the decision. What is out of sight in the language is not to be presumed to be non-existent or out of mind.'

23. In respect of the reasonable adjustments claim, no criticism is made of the self-direction on the law which the Tribunal gave itself regarding reasonable adjustments for disability (judgment [46] – [49] and [52]). The Tribunal quoted the relevant passage of the EHRC Code

of Practice, namely, paragraph 6.33. The Claimant does not seek to suggest that there was any misdirection in law, and I cannot see that any was made.

24. Rather, he argues that there was a failure to consider, or give sufficient weight to, various aspects of the evidence. First, he suggests that there was a failure to consider whether the 'essential criteria' were really essential for the roles. Mr Holloway, who appears on behalf of the Respondent, as he did below, points out that this issue was not raised before the Tribunal. In any event, it makes little sense as a matter of logic to suggest that in the context of the HR Administrator role, for example, whose 'Job Purpose' was defined as, 'to provide proactive, professional HR administration support to HR business partner teams to enable the delivery of value add HR support and the people plan for the supported organisation/s' the requirement of previous experience in providing professional HR administration support within a complex and fast moving environment was anything other than essential. Similarly, the Data Controller position was stated to be for the purpose of 'maintaining effective control of all programme/project documentation, consistent with national standards and processes and to administer non-specialist project information systems.' Whilst both roles might be considered 'entry-level' into the Respondent's organisation, it is clear from the documents that they both required specialist knowledge, skills and experience. In any event, the Tribunal at [79] specifically considered whether the criteria for the HR Admin role were essential and found that they were. It seems to me that it would not be appropriate at this stage to permit the Claimant to challenge the Tribunal's findings on a basis not previously advanced and where all the available evidence is adverse to the case he now wishes to run.

25. Moreover, at [68] of its judgment, the Tribunal found that in respect of the data controller role, 'it would not have been a reasonable adjustment to redeploy the Claimant to

this role as he met neither of the essential criteria'. Further, in respect of the HR administration role, at [78]-[79] it found as follows,

> "We carefully considered whether it would have been a reasonable adjustment to give the Claimant the role, despite him not meeting all of the essential criteria. The main criteria which the Claimant did not meet was the requirement for experience, in the context of what appeared to be an entry-level role.
>
> We concluded that it would not be a reasonable adjustment to move the Claimant to a role where he did not meet criteria which the Respondent appeared to have turned its mind to, and which the Respondent considered to be not just desirable but essential for the role, absent some evidence that the Respondent's position was unreasonable in the circumstances. The Claimant had a complete lack of any previous HR experience: this was an area in which he had had no previous dealings."

26. In that passage, the Tribunal has correctly identified that it was for them to determine whether moving the Claimant to the HR administrator role was reasonable or not, giving such weight to the Respondent's opinion that it was not reasonable as it thought appropriate, and bearing in mind the absence of evidence (from either party) that the Respondent's opinion was unreasonable in the circumstances. The finding that the Claimant had no experience of HR work whatsoever was not only open to the Tribunal but was a matter of uncontroverted fact and was clearly one which it was entitled to make and take into account when assessing whether a move to that role would have been a reasonable adjustment. This task was approached entirely in accordance with the guidance subsequently given in Miller and was a finding open to the Tribunal on the evidence.

27. In light of that, I am more than satisfied that the Tribunal, in respect of its decision on the data controller role, took the same approach and reached the same conclusion for essentially the same reasons. As it found, the Claimant did not meet the essential criteria of 'relevant successful experience of document control processes and techniques'. It would in my view fall into the trap of being hypercritical of the reasons to expect the Tribunal to have set out every part of that reasoning in full. It seems to me that on a fair reading of the reasons as a whole the

Tribunal understood both the correct legal approach and the facts of the case as advanced and appropriately applied that law to those facts. It is not an error for them not to have set out every aspect of their reasoning, because the conclusion is one of fact and is clear.

28. The Tribunal found based on the Claimant's then concession (although the Claimant before me sought to resile from this) that he did not have advanced use of Microsoft Office at [67] and made further findings that he did not have advanced IT skills at [27] based on the evidence it heard. In his submissions to me, he suggested that the Microsoft Office criterion of both document controller and HR Administrator could have been adjusted by the provision of training by the Respondent.

29. The Claimant's position with regards to this issue was that he could have been given either role together with training. He complains that this case was not addressed. The difficulty with this argument is that at [95]-[96] the Tribunal considered the Claimant's case in respect of training for alternative sedentary roles and made the following findings,

> "It was not clear to us what training the Claimant sought, or what role(s) he would have been able to fulfil with additional training. There was some discussion about the possibility of Microsoft Excel training when shadowing a role at Hither Green, but we found that there was never any vacancy available at Hither Green.
>
> This aspect of the Claimant's claim fails as there is nothing on which we can conclude that additional training would, or could, have alleviated the substantial disadvantage."

30. Whilst it might be correct that use of Microsoft Office can be improved by formal training, the HR role required, 'strong Excel, Word and PowerPoint knowledge' and it is apparent from the finding at [27] of the reasons that the Tribunal considered the Claimant to be some distance away from meeting that criterion. I accept Mr Holloway's submission that the case in respect of training remained vague and open-ended, but that the extent of the gap between the Claimant's abilities as found by the Tribunal and the requirements of these roles meant that the training need would be extensive. In any case, I did not understand the Claimant

necessarily to disagree with this analysis, as he submitted to me that his CV (as it then stood) showed that he previously only had basic skills and that it takes a significant amount of time to demonstrate strong skills and knowledge of the software.

31. In his written case, the Claimant also referred to training as possibly being suitable as an adjustment to the essential criteria regarding prior experience. However, as the Respondent points out, no amount of training would be able to make up for the Claimant's lack of successful prior experience in either the field of data control or HR administration. There was nothing in the evidence to suggest that the Claimant had any aptitude for either of these fields of work. The HR role required the appointee to demonstrate being able to manage HR support, 'within a complex and fast-moving environment'. It is difficult to see how training would have made any difference to the Claimant's inability to meet that essential criterion, especially in the context of the Tribunal having found that he was unlikely to have 'Strong Time Management organisation and prioritisation skills and the ability to work under pressure and deadlines given our findings about his lack of engagement with the redeployment process'.

32. In his oral submissions, the Claimant focussed on the redeployment policy of the Respondent, which referred to the fact that any suitable alternative employment would be for an initial 3-month period with a review. He referred to the trial period as another possible reasonable adjustment which would overcome the prior experience essential criterion. This argument does not appear to have been presented to the Tribunal and in my judgment, it is misconceived. The redeployment policy already included as part of its standard terms a requirement that the first three months of any role offered would be for an initial three months and subject to review and therefore this would not have been an adjustment. More fundamentally, perhaps, in circumstances where the essential criteria for appointment to the role had not been successfully challenged, it was reasonable for the Tribunal to accept the

Respondent's case in treating these as necessary so that an appointee was capable of independently managing in the role from day one of an appointment. Or, to put it more bluntly, the alternative employment was not suitable for someone who needed to obtain the relevant experience by doing the role itself. In any event, the Tribunal did not hear evidence about whether it would have been reasonable to waive the prior experience requirements and effectively train the Claimant 'on the job' as again this was not the way in which the Claimant's case was put at that time.

33. Finally, I am entirely satisfied that the Tribunal had well in mind the fact that it needed to make its own objective evaluation of whether any of the adjustments proposed by the Claimant were in fact reasonable. The entire section of the written reasons which addresses the reasonable adjustment claims is framed in language which unambiguously sets out that the Tribunal has reached its own assessment of the roles. For example, at [66] in respect of the Stores Co-ordinator role, it found that,

> "We were satisfied that it was not just 'more of a challenge'; it was a role which the Claimant was not suitable for and could not have fulfilled with his experience and qualifications. It would not have been a reasonable adjustment to redeploy the Claimant to this role."

34. At no point does the Tribunal defer to the judgment of the Respondent as to whether any of the alternative roles were suitable, but rather in each case, undertakes an independent analysis of whether the Claimant could have been appointed to the role. In every instance it does so by express reference to the relevant documents, including the job descriptions, the redeployment policy and the witness evidence. It considered each and every proposed adjustment separately and gave reasoned decisions in respect of each one. Its approach is entirely in line with the guidance of this Court in *Rentokil v Miller* which I have set out above and I can discern no error in it.

GROUND 4 – THE HELPDESK ROLE

35. By this Ground, the Claimant makes a direct challenge to the Tribunal's finding of fact at [84] that if the Respondent had asked the members of staff who were primarily allocated to helpdesk duties rather than general CSA duties, they would have refused, because,

> 'It was a desirable role and those who worked on the helpdesk had either been selected after expressing an interest in a predominantly helpdesk role or had worked solely on the helpdesk as part of their express contractual terms.'

36. As Underhill LJ pointed out in **O'Brien v Bolton St Catherine's Academy** [2017] EWCA Civ 145, at [45], in truth an appeal against a finding of what would have happened in a hypothetical situation is essentially a perversity argument. To succeed in challenging a finding of fact in the EAT, it is necessary for an appellant to make out, 'an overwhelming case' that the employment tribunal 'reached a decision which no reasonable tribunal, on a proper appreciation of the evidence and the law, would have reached' (**Yeboah v Crofton** [2002] IRLR 634*)*.

37. The finding which the Tribunal made, and which I have set out above, was one which was clearly properly open to it on the evidence and followed careful consideration of the background circumstances, in which the Tribunal was not uncritical of the Respondent's conduct. It was supported by other findings of fact, including the evidence that a helpdesk role was desirable for objective reasons to do with shift allocation and indoor work and that those who were allocated the role either had been through an expression of interest process or had a contractual right to be allocated that work. The challenge to this finding falls markedly short of establishing that it was unreasonable or without proper appreciation of either evidence or law.

38. In any event, there was a further problem with the Claimant's reliance on the helpdesk role. The Tribunal additionally found that allocation to a helpdesk role would not have been an

effective adjustment because it would not have relieved the Claimant of the obligation to stand and walk for lengthy periods, because helpdesk staff operate as cover for CSA duties and therefore are expected as part of their role to patrol the station (see [6] and [7]) and that security patrol function were subject to staffing level controls which could not be departed from without closing part of the station. These findings, which meant that the Claimant would not have been able to do the helpdesk role because of his disability, were not challenged by the Claimant in either his written grounds or skeleton argument but only in his oral submissions after I had drawn his attention to the finding. This challenge cannot succeed: it was entirely open to the Tribunal to find that the helpdesk role was unsuitable for a person with the Claimant's disability.

GROUND 5 – EXTENSION OF TEMPORARY ROLE

39. The Claimant argues that in the circumstances of the Covid-19 pandemic, which had slowed down the jobs market and increased the waiting times for medical treatment, he ought to have been permitted a while longer to obtain redeployment and a reasonable adjustment would have been to postpone the decision regarding dismissal. During this period, he would, on this case, have continued to be paid to do a helpdesk role with reduced duties, namely without the security patrol functions. By this argument, he seeks effectively to challenge the factual finding of the Tribunal that it was not reasonable to permit the Claimant to continue temporarily on the helpdesk rather than dismissing him when they did as perverse.

40. The Tribunal found that by the date of termination, the Claimant had either been off sick entirely or only fit to undertake alternative sedentary duties (often on a part-time basis) for over a year [28] – [35] of the reasons. It also found that there was no clear prognosis as to if or when recovery would be expected [35]. It also found that he had been in the redeployment scheme for a year and had only applied for 3 roles [24] and had not been engaged with

redeployment. In the circumstances its finding [92] that it was 'uncertain as to whether [further delay] would achieve anything and it was unclear how long the wait would be' was entirely supported by the evidence and its other findings and is not amenable to challenge on appeal because it was well within the range of findings open to the Tribunal. Whilst it would have been open to the Respondent to wait a while longer before deciding whether to dismiss, it was entirely open to the Tribunal to accept, as it did at [88], that there was 'a financial cost to employing someone indefinitely to do a job that is not required' and that the Respondent had acted reasonably in treating it as an appropriate time to bring the situation to an end.

GROUND 6 – RELIANCE ON REASONABLE ADJUSTMENT FINDINGS FOR SECTION 15 DISCRIMINATION CLAIM

41. Finally, the Claimant seeks to challenge the Tribunal's dismissal of his claim pursuant to section 15 of the Equality Act 2010, that the decision to dismiss him was discrimination arising out of his disability. Whilst he did not withdraw his argument before me, he did not make any oral submissions but relied on the written grounds which had been prepared by Counsel. Those grounds argue that the Tribunal erred in law by treating the exercise of objective justification of the dismissal for purposes of section 15 as being essentially the same as reasonable adjustment exercise, but that it ought to have approached the issue afresh and given full and separate reasons.

42. The starting point is the decision in **Archibald v Fife**, in which it was determined that where an employer has dismissed his employee because of something arising in consequence of his disability, it will not be open to the employer to justify that dismissal unless it had complied with its duty to make reasonable adjustments. It was, therefore, in my judgment, entirely appropriate and understandable that the Tribunal should engage first and foremost with the reasonable adjustment claims.

43. In respect of the discrimination arising from disability claim, the Tribunal accepted that the Claimant had been dismissed due to sickness absence and ability to carry out the full duties of a CSA, including undertaking shifts of full length at [108]. It also found that the Respondent's aims of ensuring that employees were capable of carrying out the role that they were employed to do and that they attend work were legitimate [109].

44. The only issue was therefore whether dismissal was a proportionate response to those aims. In practice, the choices open to the Respondent were redeployment (without or with training), allowing more time to decide or dismissal.

45. Whilst it will not be true that in every case of alleged disability discrimination dismissal the reasonable adjustments and section 15 discrimination justification cases will stand and fall together, it seems to me that on the facts of this case, they clearly did. The Tribunal undertook a critical evaluation of the options open to the Respondent in respect of waiting or redeployment in the context of the reasonable adjustments claim. It addressed its mind to all the options and made findings of fact which were open to it that it was not reasonable to expect the Respondent to wait longer for the Claimant to become fit to work and none of the alternative roles were reasonable for him to be redeployed into. It would have been otiose to rehearse that analysis and irrational to reach a different conclusion when considering the same facts in the context of the objective justification and proportionality of the dismissal. Having found that there was no failure to make reasonable adjustments, it was entirely permissible for the Tribunal to rely on that analysis and those findings to conclude that there was no lesser measure open to the Respondent to meet its legitimate aims other than to dismiss the Claimant when it did.

CONCLUSION

46. In the circumstances, the Claimant's appeal is dismissed. I should like to thank the Claimant and Mr Holloway for their assistance and submissions, which have been very helpful.