EMPLOYMENT TRIBUNALS

Claimant: Mr S McCready

Respondent: Alten Ltd

Heard at: London Central Employment Tribunal by CVP

On: 15-17 September 2025

Before: Employment Judge Hopton

Representation
Claimant: Represented himself
Respondent: Ms English (Consultant)

RESERVED JUDGMENT

1. The complaint of unfavourable treatment because of something arising in consequence of disability is well-founded and succeeds.

2. The complaint of failure to make reasonable adjustments for disability is well-founded and succeeds.

3. The complaint of indirect disability discrimination is not well-founded and is dismissed.

4. A remedy hearing will be listed in due course.

REASONS

Preliminary matters

5. We spent the morning of the first day discussing preliminary matters.

Hearing length

6. The hearing had originally been listed for four days but had been amended to 3 days to fit in with the tribunal's list. With the agreement of the parties I decided to hear evidence and submissions on liability only.

Adjustments

7. The claimant explained that he didn't anticipate needing any particular adjustments, but he might need 20 to 30 minutes to recover if he became suddenly fatigued. Ms English did not require any adjustments and neither did the respondent witnesses. We took regular breaks throughout the hearing.

Claimant's applications

8. The claimant had sent three applications to the tribunal. Where necessary, I made decisions on these and gave full reasons at the hearing so only deal with them briefly here.

9. The first application concerned the accuracy of the bundle. The respondent's bundle contained some errors and the claimant had prepared an alternative bundle. With Ms English's agreement, we used the claimant's bundle instead of the respondent's bundle during the hearing.

10. The claimant initially had some concerns about Mr Simon's witness statement but withdrew his application for a witness order after we had discussed the issue.

11. The claimant also had an application for specific disclosure which I granted. However, during the hearing it became apparent that the respondent was unable to comply with the majority of the disclosure order as they no longer had access to the documents, and was only able to provide one additional document (the new document). As the claimant only had access to the new document after evidence had been concluded, I gave both parties the opportunity to give further evidence. However, the parties sensibly took the view they could deal with the matter in their submissions rather than recalling any witnesses.

List of issues

12. The list of issues was as set out in Employment Judge Webster's Case Management Order dated 28 February 2025.

13. To properly reflect the claimant's claim, an additional point was added to the list of unfavourable treatment: at 2(iii) *A reduced ability to attend site.* The respondent had no objection to this addition.

14. In written submissions, the respondent had raised the issue of time limits. This was the first time the issue of time limits had been raised. It was not in the defence or in the list of issues and did not appear to have been brought up with any previous preliminary hearings. The respondent made an application to amend its defence that any acts or omissions that occurred before the 9th of August would be out of time.

15. I decided that although the *Selkent* factors had not been made out, as it was a jurisdictional point I felt obliged to include it as an issue on the basis

that if the claim is out of time regardless of the respondent's position on that, the tribunal will not have jurisdiction to hear it. I therefore added this as an issue.

16. The parties agreed that the list of issues was otherwise correct.

Documents and evidence heard

17. I had available to me the claimant's bundle of 506 pages and some additional pages consisting of: the claimant's exhibit SM1; 28 pages of additional disclosure numbered 507 – 534; and the new document which was an additional email from Erica Ammoscato to Peninsula attaching a job description. I had witness statements from the claimant, Erica Ammoscato (HR Administrator), James Barrie (HR Advisor) and Thomas Simon (Senior Manager). I heard evidence from all the witnesses. Ms English also provided written submissions. The respondent chose not to call Mr Kirsten, the Cummins account manager or Mr Rupani the claimant's initial recruiting manager. I understand that they have left the respondent which is why they were not called. This meant they did not have the opportunity to provide their own evidence to the tribunal. Where necessary to do so, I have had to draw conclusions about their actions based on the other evidence before me.

18. I found all the witnesses to be honest and credible. I believe that they told me the truth as they remembered it. But it is possible to be honest and credible and mistaken or to misremember things, particularly with a gap of two years between the incident and the evidence and particularly when you are being asked to remember something in the context of a tribunal claim on one side or the other. Although there have been a number of occasions where I have concluded on the balance of probabilities that the facts were different to those explained by some of the witnesses, I did not find any of the witnesses to be deliberately dishonest.

Findings of Fact

19. I have limited my findings of fact to those relevant to the issues in the case. This means that even where facts are disputed between the parties, I have not made findings unless they are relevant to the issues.

Claimant's initial recruitment

20. The claimant applied for a role with the respondent in March 2023. He was initially recruited on a "project hire" basis, which meant that he was recruited for a specific project. After two successful interviews he was invited to an interview with the client (Tenneco) of the project which had been identified for him. However, Tenneco decided that the claimant did not have quite the right skill set for the role and it did not approve him for the project.

21. During his interviews, the claimant was asked about whether he was able to relocate to Manchester and he confirmed he would be able to do that.

22. After the Tenneco project had fallen through, Mr Rupani then told the claimant that rather than being recruited on a project hire basis, he would instead be employed on a "direct hire" basis which meant that he was employed directly by Alten rather than for a specific project and would be allocated to projects as and when needed. Although there was no difference between project hire or direct hire employees after they had joined the company, a direct hire contract was a more beneficial route into the company compared to a project hire route because it did not require specific sign off from a client before an employment contract could be issued.

23. In order to be taken on as a direct hire, the hiring manager had to put together a business case to support the direct hire route rather than the project hire route. The business case for the claimant's hire was not available to the tribunal. In response to a question, Mr Simon said that he did not think much of the business case for making the claimant a direct hire. Nevertheless, the process was that a business case had to be presented before a direct hire was permitted, so it must have been thought by some in the respondent that there was a high likelihood that the claimant would be easy to place in suitable roles.

24. On 1 August 2023 the claimant had a meeting about a project for a client called Cummins. This was a project that several respondent employees were already assigned to. The claimant was provided with a job description for the role. This specified a requirement to work on site *"on average 1-2 days per week (negotiable). Occasional travel to the test sites will be necessary (10% of the time)".* The respondent believed the claimant would be a good fit with the role and a meeting with the client was set for 7 August 2023.

25. On 4 August 2023, the claimant requested an occupational health (OH) assessment. On 7 August 2023 the claimant disclosed to the respondent that he had the disability of multiple sclerosis (MS). He said in an email to Erica Ammoscato that *"I have a disability called multiple sclerosis. It is an autoimmune disorder, and I receive immunosuppressive therapy for this. As a result, I am an at an increased risk of serious illness, ICU admission and mechanical ventilation if I contract COVID-19. It also means I have problems getting the COVID-19 vaccine. I would like to understand what adjustments could be made to accommodate me at Alten."* The respondent therefore knew about the claimant's disability from that date.

26. Later that day, the claimant attended a meeting with Mr Rupani, Mr Kirsten and Ms Ammoscato to discuss his disability. Mr Kirsten said he would contact Cummins and check their requirements about location. Mr Rupani told the claimant that he was no longer being employed on a direct hire route but that he would return to being a project hire provided that he

secured a project. He reiterated this by email on 16 August 2023, saying *"after I was made aware of your health condition, the only option remains of you going back to a project hire, which means if we find a project which is suitable to your needs, then we move forward with bringing you in."*

27. The meeting that the claimant was due to attend on 7 August with Cummins was cancelled. There was some inconsistency between the respondent witnesses as to whether the meeting was cancelled by Cummins or by the respondent. As Mr Kirsten, the Cummins project manager was not a witness, none of the witnesses had direct knowledge of who had cancelled the meeting, and none were sure.

28. It seems more likely to me that the reason for the cancellation was the claimant's disclosure of his disability and request for reasonable adjustments, and that the respondent cancelled the meeting because it did not want the claimant to meet the client, given the adjustments that he would require. The reason I think this is more likely, is that Mr Rupani's immediate decision to change the claimant's status from direct hire to project hire suggested that he did not believe the claimant would be able to do the Cummins role. If Mr Rupani had been prepared to discuss reasonable adjustments with Cummins, there would have been no reason to change the claimant's recruitment status at that stage. The fact that his first reaction was to put the claimant on a less advantageous recruitment path, rather than to propose discussing the issue with Cummins in the forthcoming call, suggests that he had no intention of discussing the reasonable adjustments with them. The other aspects that make me think that the respondent cancelled the Cummins call are the timing of the cancellation (in that it was the same day as the claimant had disclosed his disability) and the fact that the claimant was not told at the time that Cummins had caused the cancellation.

29. On 8 August the respondent asked the claimant for a medical report and he sent to Ms Ammoscato a letter dated 2 December 2020 from his Consultant Neurologist which was the most recent report he had even though it was written over two years previously.

30. On 14 August, the claimant was sent a letter from Mr Rupani, dated 10 August 2023, which asked for his consent to acquire the OH report. This letter concluded by saying, *"I feel it is only fair to forewarn you that if the evidence indicates that you are unlikely to work on site in the reasonably near future we may, unfortunately, have to consider not to proceed with your employment. I do hope this does not turn out to be the case."*

31. On 16 August Mr Rupani sent the claimant an email confirming that he was being moved from the direct hire back to the project hire route. He said *"after I was made aware of your health condition, the only option remains of you going back to a project hire, which means if we find a project which is suitable to your needs, then we move forward with bringing you in."* In his witness statement, Mr Barrie said in his witness

statement, *"from recollection, it is correct that [Mr] Rupani, one of the previous Business Managers removed the Direct Hire route."* He confirmed in his oral evidence that the claimant was moved off the Direct Hire route onto the Project Hire route and that the Project Hire route would be less advantageous from the claimant's perspective of trying to gain employment.

32. In his witness statement, Mr Barrie went on to say that *"Thomas Simon took the approach that Stuart was on a Direct Hire route as confirmed by [Mr] Rupani on the 31st July 2023 by opening up all potential projects for Stuart to start on and kick-start his employment into the company."* Mr Simon confirmed this in his evidence, saying that, in practice, the claimant remained on a direct hire route because the contracts being issued to him did not refer to a specific project. Although I accept that he was provided with a contract that was usually used for direct hires, Mr Rupani unequivocally transferred the claimant to the project hire route, confirming this in writing, and the reality was that the respondent was not prepared to hire the claimant until there was a suitable project available. This was made clear by the way that the start date of his contract was pushed back on three occasions. On one of these occasions, the respondent's meeting notes record Mr Simon asking, *"to give me more time in finding you a project, are you open for us to push your start date back?"* This question was not consistent with his assertion that the claimant was on a Direct Hire route as someone on a Direct Hire route would not have needed a project in order to be given a start date.

33. On 21 August, Mr Kirsten told the claimant that Cummins required Alten engineers to be on site. He said, "*I had another call with them last week and they explained that due to the multiple projects running in parallel they demand permanent employees and external resources (as our consultants) to be on site to follow the prototype building phases, and react quickly to constant change requirements."*

34. Mr Kirsten was not a witness so I did not have the benefit of his evidence. None of the witnesses knew if he had spoken to Cummins about making reasonable adjustments for the claimant. Although Mr Kirsten clearly spoke to Cummins about their on-site requirements, I cannot conclude from his email on 21 August 2023 that he actually had meaningful conversations with Cummins about the claimant's requirement for reasonable adjustments and how they might be able to accommodate him having a reduced on-site presence or separate space. I think if he had had a conversation along those lines, he would have told the claimant and he would have explained specifically why the adjustment the claimant had suggested (for others to cover his on-site work, or for an isolated space) was not feasible. I have therefore concluded that Mr Kirsten did not speak to Cummins about the adjustments the claimant required.

<u>OH report</u>

35. There was some delay in obtaining the OH report. This was due to the fact that the respondent did not have an OH provider and was unfamiliar with the process. Ms Ammoscato's inexperience in obtaining OH reports led to her requesting additional, unnecessary consent from the claimant. Although this added slightly to the delay, there was no ulterior motive on her part. Although the claimant had filled in the initial forms on 15 August 2023, the respondent did not receive the report until 4 October 2023. The respondent was not prepared to discuss reasonable adjustments with the claimant until it had the OH report.

36. The OH report provided some information about MS generally, stating: *"Multiple sclerosis is a lifelong condition that affects the brain and nerves. There are many possible symptoms of multiple sclerosis. Common symptoms include tiredness, vision problems and problems with walking or balance".* It also gave more details of how MS affected the claimant and specified that the condition was making him immune suppressed and that he should be kept away from large groups or individuals so that he did not get COVID or any other minor ailments that would affect his immunity.

37. The report suggested a number of adjustments. These included:

    a. various adjustments to the immediate work environment such as an adjustable chair and desk:
    b. Working from home where possible apart from when the claimant has to visit other sites where he may have to wear a respirator whilst going around where necessary.
    c. Providing the option to work from home where possible.
    d. Take a flexible approach to working hours.
    e. Managing work volume.
    f. Considering the physical working environment.

38. In addition, the claimant had for some time been suggesting that his reduced ability to attend site could be accommodated by on-site work being managed between the project team, so that he would not need to attend site or by providing him with an isolated workspace on site. In his evidence, Mr Simon agreed that it may well have been possible for on-site work to be managed between the project team and that they had done something similar for people before. In his oral evidence he described this as "perfectly reasonable". He felt that it was unlikely that most engineering workplaces would be able to accommodate an isolated workspace however. Mr Barrie also suggested in his oral evidence that it was possible the reasonable adjustments could have been made although he emphasised the respondent's wariness of putting the claimant in an unsafe situation.

39. The claimant had been sent a contract of employment with a start date of 2 October. He had not signed this due to his (incorrect) understanding that he had to sort out his reasonable adjustments first. From the point at

which the respondent received the OH report, this start date kept being pushed back. On 21 September it was changed from 2 October to 18 October. On 12 October it was moved to 6 November.

Roles suitable for the claimant

40. On 12 October 2023, the claimant had a meeting with Mr Simon and Mr Barrie about the OH report and the reasonable adjustments suggested by the OH report and the claimant. At that meeting Mr Simon said that he believed the Cummins role had been "canned" by the client. Neither Mr Simon nor Mr Barrie had direct knowledge of what had happened to the Cummins role. Mr Kirsten, the account manager had those conversations with the client. From his general experience working at the respondent, Mr Barrie believed it might have been the case that the client had not been prepared to wait, so another respondent engineer had been appointed to the role. Mr Simon said that he could not remember the conversation he had with Mr Kirsten specifically, but he believed he must have been satisfied at the time that Mr Kirsten had checked that the role had definitely gone. Mr Simon could not remember the discussion at all (for which I do not criticise him as it was two years ago), and he was relying only on the fact he could not remember anything anomalous about the situation. For that reason, on balance, I prefer Mr Barrie's explanation. It seems more likely that the respondent had wanted to keep the Cummins opportunity and had placed another engineer into the role than that it had disappeared without any explanation.

41. Mr Simon became responsible for looking for roles for the claimant. He explained that he spoke to all the account managers and that he was looking for roles that matched the claimant's skill set (which was as a CFD (Computational Fluid Dynamic) engineer). He said that he did not discuss reasonable adjustments with the account managers because he didn't want it to have a bearing on their decision. He explained that they did not have many CFD roles at that time, but he acknowledged that the claimant had good soft skills and had interviewed well, so he might have been able to take on a project where he was not 100% aligned to what the client required.

42. Mr Simon also suggested to the claimant that he look on the respondent's job website for suitable roles.

43. On 18 October 2023 the claimant sent Mr Simon and Mr Barrie a job advert, posted on the respondent's website, for an Aerothermal Engineer. He received no substantive response to his enquiry until a meeting with Mr Barrie and Mr Simon on 1 November.

44. At the meeting on 1 November, Mr Simon explained that the Aerothermal Engineer role had "disappeared" and told the claimant that his employment would not go ahead as there were no suitable projects for him. This was confirmed by letter on 2 November 2023.

45. The Aerothermal engineer role was still advertised on the respondent website on 20 November 2023 and was re-advertised on 18 December 2023. Mr Simon suggested the continued and re-advertising of the role could be down to reasons such as: incompetence by the recruitment team or hope that the role would come back. He explained the job boards were frequently not up to date. I find this explanation unconvincing because Mr Simon had suggested the claimant check the website, the advert was available for such a long time and was actively readvertised in December. I find it more likely that the role or a very similar one was available and that the respondent did not put the claimant forward for that role because of the reasonable adjustments he required.

46. The claimant discovered that three other individuals took on roles similar to roles he could have applied for. One CAE/CFD engineer took on a role at Accelera by Cummins in September 2023. This role looked very similar to the role for which the claimant was initially earmarked. In addition, the CAE/CFD engineer had a very similar skill set to the claimant and they and the claimant shared the same engineering profile, both as CFD engineers. Two other engineers (both describing themselves as mechanical engineers) worked on the same project: one from August 2023 in a slightly different role to the role the claimant applied for, and the other from March 2023.

47. Although the mechanical engineers worked on the Accelera project, one's skill set, and the other's timing, mean that it is unlikely that they took on roles for which the claimant could have been considered. However, the CAE/CFD engineer's role does appear to have been suitable for the claimant.

48. I found Mr Simon's assertion that there were not many CFD roles available inconsistent with: the respondent's earlier decision to take on the claimant as a direct hire; the continued advertisement/re-advertisement of the aerothermal engineer role; and the appointment of the CAE/CFD engineer to the Cummins role in September 2023. I have therefore concluded that it was not accurate for the respondent to say that there would be no projects available that met the claimant's skill set in the "foreseeable future". It appears that there were roles, at least one with Cummins in September, and the Aerothermal engineer role or something similar, but they were not being discussed with the claimant. Mr Simon confirmed that he did not have any discussions with clients about reasonable adjustments and that he was not aware that any of the account managers did either.

49. Ms English said that the claimant had given mixed messages about his ability to attend site, saying he could go in if needed, and that he was open to relocation but couldn't go into site much because of his condition. I found, however, that the claimant was consistent in the reasonable adjustments he requested from the respondent. He was also consistent in his evidence before the tribunal, that he would be able to go on site,

provided it was safe. He was consistent in his explanation of what that meant, which was that it would depend on the site and the working arrangements, and is something that would need to be discussed regarding each potential workplace. In any event, even if the claimant had been inconsistent about his needs, no adjustments were ever discussed with any of the respondent's clients, so any inconsistency can have had no impact on the respondent or its ability to find the claimant a role.

50. Regarding the PCPs listed in the list of issues, Mr Barrie and Mr Simon admitted the respondent had the PCPs. They said that the PCPs were not applied to the claimant because he didn't get that far with a role.

Law

Discrimination arising from disability

51. Section 15 of the Equality Act 2010 provides that:

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

(a) A treats B unfavourably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

52. Section 136 provides that:

136 Burden of proof
(1) This section applies to any proceedings relating to a contravention of this Act.
(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

53. In the context of a section 15 claim, section 136 means that if a claimant can show the following, the burden of proof shifts to the respondent:
    g. They have been subjected to unfavourable treatment
    h. That they are disabled and the employer knew about the disability
    i. There was a link between the disability and the "something" that is the ground of the unfavourable treatment
    j. Some evidence from which it could be inferred that the "something" was the reason for the treatment

54. In the case of *Secretary of State for Justice and anor v Dunn EAT 0234/16* the EAT identified that:
    k. there must be unfavourable treatment
    l. there must be something that arises in consequence of the claimant's disability

m. the unfavourable treatment must be caused by (b), and
n. the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

55. The EHRC Employment statutory code of practice confirms that no comparator is required for a section 15 claim and that it is *"only necessary to demonstrate that the unfavourable treatment is because of something arising in consequence of the disability"* (paragraph 5.6). The code also explains that for someone to have been treated "unfavourably", they must have been put at a disadvantage. Even if an employer thinks that they are acting in the best interests of a disabled person, they may still treat that person unfavourably (paragraph 5.7).

56. In *British Telecommunications plc v Robertson EAT 0229/20* the EAT held that a tribunal must clearly address whether the "something" relied on by the claimant arose in consequence of the disability.

57. No direct linkage is required between the disability and the issue that attracts the unfavourable treatment. All that is required is a loose connection between the unfavourable treatment and the "something" (*Risby v London Borough of Waltham Forest EAT 0318/15).*

Reasonable adjustments

58. The Equality Act 2010 provides that:

20 Duty to make adjustments
…

(3) The first requirement is a requirement, where a provision, criterion or practice of [the employer] 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 Failure to comply with duty
(1) A failure to comply with the first, […] requirement is a failure to comply with a duty to make reasonable adjustments.
(2) [An employer] discriminates against a disabled person if [it] fails to comply with that duty in relation to that person.

59. The claimant must identify the reasonable adjustments required, but after he has done so, the burden of proof shifts to the respondent to show that the disadvantage would not have been eliminated and/or that the adjustment was not one that was reasonable to make.

60. The Court of Appeal confirmed in *Smith v Churchills Stairlifts plc 2006 ICR 524, CA* that it is for the tribunal to determine objectively whether or not an adjustment would be reasonable. A tribunal should look at the proposed

adjustment from the view of the claimant and the employer and determine whether the adjustment would have been a reasonable one to make.

61. Regarding the overlap between reasonable adjustment claims and section 15 claims, in *Griffiths v Secretary of State for Work and Pensions 2017 ICR 160, CA,* Lord Justice Elias said, *"An employer who dismisses a disabled employee without making a reasonable adjustment which would have enabled the employee to remain in employment — say allowing him to work part-time — will necessarily have infringed the duty to make adjustments, but in addition the act of dismissal will surely constitute an act of discrimination arising out of disability. The dismissal will be for a reason related to disability and, if a potentially reasonable adjustment which might have allowed the employee to remain in employment has not been made, the dismissal will not be justified."*

Indirect discrimination

62. Section 19 of the Equality Act provides that:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
(a) A applies, or would apply, it to persons with whom B does not share the characteristic,
(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
(c) it puts, or would put, B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

63. Section 6(3) states that "*in relation to the protected characteristic of disability... a reference to persons who share a protected characteristic is a reference to persons who have the same disability".*

64. The EHRC Statutory code of practice on employment clarifies at 4.16 that "*It is important to be clear which protected characteristic is relevant. In relation to disability, this would not be disabled people as a whole but people with a particular disability – for example, with an equivalent level of visual impairment."*

Time limits

65. Section 123 of the Equality Act 2010 provides that:

123 Time limits
(1) … proceedings on a complaint within section 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.

...

(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;

Conclusions

Time limits

66. The respondent contends that acts that occurred before 9 August 2023 are out of time. If correct, this would include the removal of the direct hire route (which the respondent says did not happen in any case) and the cancellation of the Cummins meeting. The claimant argues these were part of a series of continuing acts of discrimination.

67. The removal of the direct hire route was confirmed in writing on 16 August 2023, so it is not out of time. In any event, regarding whether or not the acts of discrimination were continuing acts, I agree with the claimant. The acts of alleged discrimination, including the removal of the direct hire route and the cancellation of the Cummins meeting all stemmed from the claimant's disclosure of his disability on 7 August 2023. The different acts of discrimination were therefore part of the same conduct which extended over a period and are therefore in time.

Discrimination arising from disability (section 15 Equality Act 2010)

68. I have found as facts that the respondent:

    a. ended the direct hire route for the claimant on 7 August 2023 (and confirmed this in writing on 14 August 2023);

    b. cancelled the claimant's meeting with its client, Cummins, on 7 August 2023;

    c. Did not put the claimant forward for a role with Cummins after that date;

    d. Did not propose the claimant for the Aerothermal Engineer position after that date.

69. This was unfavourable treatment because it meant the claimant did not secure the Cummins role, it made it more difficult for him to access roles and ultimately meant that he did not secure a role.

70. The claimant had:

    a. an increased risk of serious illness or of contracting COVID-19;

    b. the potential need for the respondent or its clients to accommodate his disability, for example by making reasonable adjustments; and

    c. a reduced ability to attend site.

71. These all arose in consequence of his disability, as evidenced by his doctor's letter, his own explanation to the respondent in August 2023 and the respondent's OH report.

72. The reason for the claimant's reduced ability to attend site was his increased risk of serious illness or of contracting COVID-19. The unfavourable treatment was a direct result of the need for the respondent or its clients to accommodate the claimant's disability and his reduced ability to attend site. Before the claimant disclosed his disability, the respondent was moving quickly to appoint him into a role. It clearly saw a lot of promise in the claimant because it was prepared to take him on as a direct hire and to have taken that risk it cannot have envisaged much difficulty in him securing a role. The claimant was offered a call with the client within a couple of hours of showing an interest in the Cummins role.

73. However, as soon as the claimant disclosed his disability, things changed. The respondent was not prepared to discuss reasonable adjustments with Cummins, which is why it cancelled the call on 7 August 2023.

74. The respondent's letter of 10 August states *"if the evidence indicates that you are unlikely to* ***work on site*** *in the reasonably near future we may, unfortunately, have to consider not to proceed with your employment"* (emphasis in the original). Mr Rupani's email of 16 August stated, *"after I was made aware of your health condition, the only option remains of you going back to a project hire, which means if we find a project which is suitable to your needs, then we move forward with bringing you in."* The respondent felt that it would be too difficult to find a role for the claimant which is why it ended the direct hire route.

75. The respondent did not propose the claimant for the Aerothermal Engineer position because it was not prepared to discuss reasonable adjustments with its clients. For the same reason it did not propose him for another Cummins role, or any other roles with any client.

76. The respondent argues that is treatment of the claimant was a proportionate means of achieving a legitimate aim. It states as its legitimate aim, *"to ensure that all employees were able to carry out their role safely and appropriately in an efficient and safe manner."*

77. This is a legitimate aim. However, failing to put the claimant forward for any roles, cancelling the meeting with Cummins, failing to discuss reasonable adjustments with any clients and removing the claimant from the direct hire route was not an appropriate and reasonably necessary way to achieve that aim. The respondent could have achieved its aim in a less discriminatory way, such as by exploring with Cummins (and other clients) what reasonable adjustments the claimant needed and involving him in that discussion. This would not have disadvantaged the respondent and would have significantly helped the claimant.

78. The complaint of discrimination arising from disability is therefore well founded and succeeds.

Failure to make reasonable adjustments (section 20 & 21 Equality Act 2010)

79. The respondent knew that the claimant was disabled by reason of MS from 7 August 2023, when he disclosed his disability. The respondent agrees it had the following PCPs:

    a. *The respondent required employed engineers to work to a specified framework of hours / workload / targets etc or be subject to performance or other management procedures; and*

    b. *The respondent required engineers to work on-site (as and when required) or be subject to performance or other management procedures.*

80. As the claimant did not secure a role with the respondent, PCP (a) did not put the claimant at a substantial disadvantage. Although the PCP would certainly have applied to the claimant, it was not something that influenced the respondent's actions in the time period during which the claim is about. Aside from the OH proposed reasonable adjustments to targets, there was little if any evidence before the tribunal which suggested that the claimant would be at any disadvantage in terms of hours, workload or targets.

81. However, PCP (b) put the claimant at a substantial disadvantage compared to someone without MS. The claimant's impaired autoimmunity meant he was at higher risk of serious illness, particularly if he contracted COVID-19. Attending site was therefore much more dangerous to his health than it would be for someone without MS. The respondent knew this because the claimant told the respondent that was the case by email on 7 August 2023 and discussed it with the respondent subsequently.

82. The respondent could have taken the steps set out by the claimant and in the OH report, namely:

    a. Keeping away from large groups or individuals

    b. Working from home apart from when he had to visit other sites

    c. Permitting wearing a respirator when he visited sites;

    d. Managing on-site work between the project team to reduce the claimant's need to attend site

    e. Providing an on-site isolated work space.

83. It was reasonable for the respondent to have taken all those steps. The only adjustments the claimant really asked for were (d) and (e). Mr Simon confirmed that (d) was "perfectly reasonable" and they had done something similar before. Mr Barrie also confirmed it would have been possible. It may have been harder to implement (e) but I cannot conclude it would have been unreasonable because other than Mr Simon's

comments that he felt it would be difficult, there was no evidence from Cummins or any other of the respondent's clients to show it would have been unreasonable in a particular workplace. The respondent has therefore not satisfied the burden of proof that (e) would not have been a reasonable adjustment. The other adjustments relating to workplace, proposed by OH (a-c) would also have been possible as they are very similar to the adjustments the claimant requested and would not have required any more from the respondent than (d) or (e).

84. Although the respondent would have had to talk to its clients about accommodating those adjustments, that would also have been a reasonable step. The respondent put forward no evidence that it discussed reasonable adjustments with Cummins or any other client, so there is no evidence that the adjustments would have been so hard to achieve, or detrimental for the respondent or the client that they would have been unreasonable.

85. The respondent suggests that the claimant knew he would have to work on site and that working on site was a key requirement of the roles for which he applied. It suggests in its grounds of resistance that the claimant did not disclose his disability immediately in order *"to lure [the respondent] into the belief the claimant could meet the requirements of the role"*. I found this a surprising assertion that demonstrated the respondent's lack of understanding of its duty to consider reasonable adjustments for a disabled candidate. The requirement is to take reasonable steps to avoid the disadvantage to the disabled person. I did not have sufficient evidence to conclude on-site work was a key requirement, but if it had been, it is entirely possible to apply a reasonable adjustment to a key requirement (for example, covering on-site work between the team) particularly in the context that two of the respondent witnesses felt it was a feasible adjustment to make. Whether or not the claimant knew of a requirement to work on site is therefore irrelevant, because the claimant's knowledge of a particular aspect of the role does not relieve the respondent of the duty of considering reasonable adjustments if these are appropriate.

86. As the respondent did not take any of the steps set out above, at any point, the question of when it should have taken them is academic. However, for completeness, it would have been reasonable for the respondent to put into place the adjustments the claimant requested on 7 August 2023 on that date. The claimant provided a clear and clearly reasoned request for adjustments on that date which the respondent should have discussed with Cummins in the 7 August meeting. Although it was reasonable for the respondent to commission an OH report, it was not reasonable for it to wait two months before implementing any adjustments, when the claimant was clear about what he required and why, and they were adjustments that the respondent was able to accommodate.

87. The respondent failed to implement those or any reasonable adjustments. The claim for failure to make reasonable adjustments therefore succeeds.

Indirect discrimination (section 19 Equality Act 2010)

88. The claimant points to the same PCPs as above for his claim of indirect discrimination.

89. Both PCPs applied to the claimant and to all employees, which included people who did not have MS.

90. The OH report states that *"Multiple sclerosis is a lifelong condition that affects the brain and nerves. There are many possible symptoms of multiple sclerosis. Common symptoms include tiredness, vision problems and problems with walking or balance."*

91. The claimant confirmed in his evidence that MS could be an extremely varied condition.

92. Other than the claimant's answer to one question, and the brief two sentences in the OH report, there was no evidence before the tribunal about how people with MS would be affected by the PCP. Particularly given that variety in symptoms was emphasised in the evidence, there is therefore not enough evidence for me to conclude that the PCP put people with MS (as a group) at a particular disadvantage when compared with people who did not have that condition.

93. The complaint of indirect discrimination therefore does not succeed because a group disadvantage has not been established.

Approved by:

Employment Judge Hopton

22 September 2025

JUDGMENT SENT TO THE PARTIES ON

30 September 2025

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FOR THE TRIBUNAL OFFICE