EMPLOYMENT TRIBUNALS

Heard at: Croydon (by video) **On:** 27 to 30 October 2025

Claimant: Mrs Lorraine Hamilton-Julien

Respondent: Cygnet Health Care Limited

Before: Employment Judge E Fowell

Mrs R Effeny

Mr D Rogers

Representation:

Claimant In person

Respondent Adeola Fadipe of counsel, instructed by Schofield Sweeney LLP

JUDGMENT

The unanimous decision of the Tribunal is as follows:

1. The claim of wrongful dismissal is dismissed on withdrawal by the claimant, her notice pay having been paid.

2. The claimant's dismissal was fair.

3. The complaint of discrimination arising from disability is dismissed

4. The complaint of failure to make reasonable adjustments is dismissed.

REASONS

Introduction

1. These written reasons are provided at the request of the claimant following oral reasons given earlier today.

2. By way of background, Cygnet Health Care Limited is a private health care provider, which means that it contracts with the NHS to provide various services. Mrs Hamilton-Julien worked for them as a mental health nurse at Cygnet Maidstone, a mental health facility on the Kent Medical campus in Maidstone. She began work there in January 2021 and almost immediately injured her leg. It happened in the course of training she had to do on restraint techniques. After that she was limited to more of a support role until she was able to retake the training, but in fact that never happened. In November 2022 she had another accident when a shelf collapsed and she injured her wrist, after which she was largely confined to admin tasks, and she could only do those with some difficulty. This continued until September 2023 when she was dismissed on capability grounds.

3. She says that she should have been redeployed elsewhere or that the company should have given her more time to recover, so it was an unfair dismissal. For the same reasons she says that her dismissal was discrimination arising from her disability, and that there had been a failure to make reasonable adjustments. The company accepts that her leg and wrist injury amount to a disability.

4. For some reason the company did not pay her any notice pay when she was dismissed but they have done so since she brought this claim and the complaint of wrongful dismissal has now been withdrawn.

5. The issues to be decided are set out more fully in an agreed list made at the preliminary hearing on 28 January 2025. We will work through them in due course.

Procedure and evidence

6. Mrs Hamilton-Julien was represented by solicitors until fairly recently. Although it is always difficult to represent yourself at a hearing of this sort, she was represented at the preliminary hearing, which established the list of issues, and had a professionally drafted witness statement tailored to those issues.

7. We heard evidence from her and, on behalf of the company, from:

   (a) Mr Christopher Bridgeman, at that time Clinical Services Manager, and hence her second line manager;

(b) Ms Lynn McGhee, Hospital Manager at Colchester, who took the decision to dismiss her; and

(c) Mr Keith Soper, Operations Manager for London Hospitals, who held the appeal hearing.

8. The bundle of document amounted to 681 pages. Having considered this evidence and the submissions on each side we make the following findings of fact. Not every point is dealt with, only those necessary to deal with the issues in the list of issues and to support our conclusions.

Findings of Fact

Introduction

9. Cygnet Maidstone has four wards and Mrs Hamilton-Julien worked on Kingswood, which is a high dependency rehabilitation service for men. The patients have all been detained under the Mental Health Act. They have a primary diagnosis of mental illness but also some other condition such as substance abuse, alcohol abuse or other challenging behaviour.

10. On entering the ward there is a large communal area with couches, televisions and beanbags where the patients socialise. To the right, through a door, is a nursing station for the staff, where they write up their various notes and reports on the computers, with a separate office for the Ward Manager. To the left there is a long passage, off which each patient has their own room. We also heard that there is a clinical room for giving treatments and private discussions and a dispensary for giving medication – a small room with a hatch, through which the medicines are dispensed.

11. Upstairs there are various offices. One was occupied by Mr Bridgeman, who as Clinical Services Manager, was responsible for services on all four wards. The overall Hospital Manager was also there, together with a psychology team, social workers and various others.

12. The nursing staff on Kingswood operate on a shift system with (ideally) five members of staff on a day shift and three at night.

PMVA Training

13. An important part of the induction training for all staff is the PMVA course - Physical Management of Violence and Aggression. It is a five day course and all of the staff, including Mr Bridgeman, have to do it.

14. Mrs Hamilton-Julien started on 18 January 2021. She was then 58 and had diabetes, which she declared as a disability at her interview [539], so physical exercises of this sort were not necessarily straightforward for her.

15. As it happened, there was a PMVA course the following week. There are two parts to the training: the first two days, known as Part 1 or Breakaway training, are about how to remove yourself from a potentially dangerous situation; Part 2 is a three-day module and includes restraint techniques. Mrs Hamilton-Julien did the first part but on the first day of Part 2 she injured her leg. At the time it did not seem particularly serious; an ice pack was applied and she sat out the rest of the session. At the end of the day she was advised to take it easy when she got home and to say if she was still in pain the next day [180]. She *was* still in pain, and so she could not continue.

16. She went to see her GP the next day and her GP later provided a short report summarising her treatment for her injuries [476]. On that occasion she presented with thigh pain and was prescribed topical steroid cream. But there was also an ultrasound scan which showed a hamstring tear. (The report does not specify but we assume that she was referred to a hospital or clinic for that scan.) There was no ongoing treatment however and she did not see her GP about her leg again until June 2022, nearly 18 months later. We bear in mind that this was during the covid pandemic so it was not very easy to get treatment. A third lockdown had been announced in England on 6 January and schools were closed until March.

17. Her work continued however, and the plan was that she simply take the next training course. In the meantime she continued to have pain and to work through it as best she could.

18. We have few documents from that time, but it must have been accepted quite early on that she could not work as one of the dedicated ward staff in those circumstances. Since she had not passed her PMVA training there was a risk of harm to her if she needed to get involved in some physical restraint. However, a good deal of the work done by a mental health nurse involves writing up care plans or other reports, and she was able to carry on working in the nursing station doing some of that admin while she recovered. It was considered to be safe enough, on the basis that she had carried out the breakaway training, so if she was in the general ward area and there was a problem she could extricate herself. But it did mean that another mental health nurse had to fill her place on the roster. She carried on being rostered in the same way so if she was on a night shift there would be three others on the roster and she was listed as a supernumerary. That meant of course that the company had to bear the cost of employing someone else to do her job while she was recovering.

19. There was no immediate recovery and she was unable to take the next course in March. So, she was referred to occupational health. We do not have that report. Another PMVA course was missed in June 2021, despite which Mrs Hamilton-Julien passed her probation period in August.

Chair and other adjustments

20. In August 2021 she reported that the office chairs were uncomfortable and were causing back and neck pain. She had a few days absence as a result. That led to a workstation assessment in November 2021 [193] which recommended an adapted chair. It recorded that she was spending 50% of her time at her desk and the other 50% on the ward.

21. One example of nursing duties which she gave in her statement, and which was not disputed, was that in November 2021 she had to travel in a van with a patient on a 90 minute journey. The patient had a history of psychotic illness. Clearly, that is not a duty that should have been assigned to her given the lack of PMVA training, and we mention it purely to illustrate that she was doing rather more than she should.

22. Later that month, on 27 April, she saw her GP – the first visit about injuries since January 2021, this time with ongoing shoulder pain. She was given pain killers and they discussed her seating arrangements.

23. There were then a series of further absences due to back pain or neck and shoulder pain and that resulted in another referral to occupational health in March 2022. Throughout that time Mrs Hamilton-Julien's line manager was Ms Charlene Nola. She arranged for the chair and then for a neckrest and backrest to go with it. The headrest did not arrive until June 2022. In fact, it took so long that in May Mrs Hamilton-Julien raised a grievance about the delay.

First review meeting

24. On 7 June 2022 Mrs Hamilton-Julien had a meeting with Ms Nola and Mr Bridgeman to review the situation regarding her PMVA training. It was an informal meeting but the outcome is recorded in an email [235] from Ms Nola. By then Mrs Hamilton-Julien had been employed for nearly 18 months and the PMVA course was still outstanding. They decided that she should be given a further three months to complete it, otherwise they would have to look at redeployment elsewhere within Cygnet. That was the first mention of any sort of time limit.

25. The following day she saw her GP again, this time with continuing thigh pain. She was referred to a specialist unit to examine her range of movements. That assessment was carried out in July and recorded that she had had pain since the

injury at work, that it was constant and increased with sitting to standing, walking, using the stairs, kneeling or squatting and was stiff in the morning.

Grievance

26. The grievance led to a meeting with a Mr Ricky Mugwagwa, the Hospital Manager at Blackheath, in July. His outcome letter [261] recorded the events to that point. It noted that her absences had built up, to the point where she had had a disciplinary warning in January 2022. One concern of Mrs Hamilton-Julien's was that she had exhausted her sick pay and so had lost money as a result of what was a work-related injury but that complaint was not upheld. Overall, he agreed about the delay in providing the supportive chair and equipment, although that was largely academic as by the time of the hearing it had been provided. (Mrs Hamilton-Julien reminded us of this delay a number of times in her closing submissions but it is not in fact one of the issues we have to resolve, i.e. it does not appear in the list of issues.) Otherwise, he concluded that she had received suitable support to date and that there needed to be a review of her absences and of her ability to complete a PMVA.

Occupational Health assessment

27. Shortly before the grievance outcome letter arrived, Mrs Hamilton-Julien had a further occupational health assessment on 18 July 2022 [257]. This concluded that she was fit to continue in her current (modified) role, that she should wait until she had completed her physiotherapy before retaking the PMVA course and that a physical risk assessment be completed to identify any particular activities that aggravated her current symptoms; also that she have regular postural breaks during the day. The main concern at that time, from an occupational health point of view, was with her posture and seating arrangements.

28. Mrs Hamilton-Julien had an informal meeting with Mr Bridgeman on 22 August to discuss things. The physiotherapy was due to begin on 20 September 2022 and the second session was on 4 October. He proposed to take her off the shift rota and allow her to work from 9 to 5, Monday to Friday but she was not happy with that because it would mean she lost the enhanced pay she received for working nights and weekends. So, he agreed that she could carry on as before, as a supernumerary on the rota.

Second review meeting

29. The three months period allowed in the June meeting was up in September. Mrs Hamilton-Julien had another meeting with Mr Bridgeman on 11th to discuss the position. This time it was a formal meeting, and she was accompanied by her

union representative, Mr Hocking. There was also a note-taker present, Ms Paul, an HR Business Partner.

30. Mr Bridgeman asked how the physio had gone. She said that 'it remains the same' and she had another appointment in October and then on 15 November, so they were about one a month. More generally, she said that moving around was a challenge, so in fact things were slightly worse. That led to a discussion about how much moving around was needed. Her view was that she was still being expected to help out with nursing tasks as the ward was short-staffed and they discussed whether to move her off the ward altogether. Her preference was to stay where she was as long as the staff knew what she was meant to do, i.e. mainly admin work. They went on to discuss the possibility of redeployment, and Mr Bridgeman made clear that if she could not complete her PMVA and there were no alternative positions that did not require it, she might be dismissed.

31. There was then a separate disciplinary hearing on 28 September because of the level of sickness absence, but no disciplinary action was taken given that the reason mainly related to back and shoulder pain. As before, that absence involved some occasional unpaid days off when her annual sick pay allowance was exhausted. (We assume that that was calculated on a rolling 12-month basis.)

Second injury

32. On 10 November 2022, Mrs Hamilton-Julien had her second injury, to her wrist. The shelf that housed the medication folders in the dispensary room fell off the wall onto her left hand [336]. Nothing was broken but her hand was painful and swollen.

33. That changed things. From a safety point of view she was no longer able to extricate herself from any aggression on the ward and so she was moved upstairs to an office on the same floor as Mr Bridgeman and various others. She was not happy about this, mainly because she was working in an office on her own, even though it was next to a communal area and there were other people about. She came in on 13 November and emailed Mr Bridgeman [339] to say that she had found it difficult to find the keys to get into the office and that she also needed to access the toilet which was usually locked at 5 pm. (On a day shift she would be in the office until 8 pm).

34. Perhaps she was making too much of these difficulties. It is a building which is open around the clock and there are toilets downstairs, and it ought not to have been too difficult to prevent a nearby toilet being locked up. The main problem was the pain in her hand which meant that she was having to type one handed, so that cannot have been very easy for her.

35. On 29 November she had another occupational health assessment [356]. It noted that she had not seen her GP about the hand injury but intended to do so, and there was still pain, swelling and a lump. But the main issue was still her left leg. The report noted that she was walking with a limp because she was compensating with her right leg and still had pain in her left, that she was able to prepare simple food such as sandwiches and had help with other day-to-day tasks. It advised that she should book a follow up appointment with her GP and in the meantime take regular breaks away from her workstation, to stretch and change position.

Redeployment Proposal

36. Mr Bridgeman wrote to her on 1 December [359] although it does not seem that he had seen this latest occupational health report. (In fact he referred to the previous one.) He attached a draft risk assessment to take account for recent wrist injury and invited her to a meeting on 15 December to discuss it. That draft risk assessment essentially concluded that she was safe to carry on doing her admin duties.

37. For some reason they had a brief meeting on 6th not 15 December [366]. They may simply have bumped into one another. He mentioned to her a possible alternative position on Roseacre ward, which is a neighbouring ward for female patients with personality disorders. His reasoning was that there were more staff on Roseacre and that the full PMVA training was not required. Mrs Hamilton-Julien was not at all keen on that idea. She wrote to him afterwards at some length [367] setting out her objections, in particular that Roseacre was more dangerous.

38. Some of the reasoning is difficult to follow. She stated that she was in fear of being attacked without the PMVA training but in the meantime she said she was quite capable of doing her nursing duties, she just needed to work the same pattern as before but without core patient contact. In her view, she could dispense medication and compile clinical reports and care plans. In short, she preferred to be back working in the nurses' station, not in an office on her own, doing written work and some dispensing.

39. The problem with that from the respondent's point of view is that with her wrist injury she could not extricate herself from any threat or violence. Hence, the respondent's position is not consistent either. It is hard to see how she could have gone to Roseacre as things stood.

40. However, it does not seem that they had a meeting on 15 December. Having had that firm response from her, or possibly having thought better of the idea, Mr Bridgeman replied on 7 December noting that she was not happy with the idea

and suggesting instead that they meet once the latest occupational health report had been received [374].

41. She had a further session of physiotherapy on 20 December, the fourth, and several further days off at around that time. There was some further PMVA training scheduled for 30 January which she asked to miss [384] and things carried on without any obvious progress. Every month she would have 3 or 4 days sickness absence because of pain related to her leg and these were by now all unpaid. It may well be that her morale had also suffered significantly by this point.

42. The physio sessions were being provided by a Ms Arends, who later provided a report to the company in February 2023 [467]. The five sessions allowed by the NHS had all been completed by then. She explained that she had been treating Mrs Hamilton-Julien with manual therapy and she had been given stretches but there had been 'only little improvement'. She was not sure if the original diagnosis of a torn hamstring was correct and so she had asked for an MRI scan. She had also recommended a further five sessions of physiotherapy, 'but in closer secession' (sic) i.e. succession. This was referred to from then on as 'intense physiotherapy' although the intended treatment was no different.

Third review meeting

43. A further, formal review meeting was held on 16 February 2023, which in fact was shortly before Ms Arends' report. Mrs Hamilton-Julien said that she didn't feel any better and in fact that her leg was getting worse [394]. She had had a recent fall and her leg had given way. She had fallen on her right knee and now needed a walking aid. She was also wearing a hand brace because of the wrist injury which she wore while she was typing. She asked if she could work from home on a full-time basis to avoid having to travel.

44. Mr Bridgeman said he would look into it but he soon concluded that it was not viable. We did not explore that at any length and Mrs Hamilton-Julien conceded that it was not really an appropriate request. We can see immediate difficulties in that her workstation had been substantially adapted to allow her to do her work, and she could not simply take confidential patient records home. No one else at the company worked from home more than very occasionally so this was never really an option. It does however indicate that her condition was much worse than before.

Fourth review meeting

45. There was another formal meeting with Mr Bridgeman on 4 April 2023. Again, it was minuted and this time it was referred to as a capability meeting. It took place the day before a Breakaway training session which Mrs Hamilton-Julien was due

to attend, so the first item was whether she would be able to do it. She said that she was suffering but was willing to give it a go. Mr Bridgeman said that she would not be able to use the walking aid in her role on the ward so she needed to think about how that would work. It seems to have been a fairly short meeting and it was left on the basis that they would review things after the training.

46. Surprisingly perhaps, Mrs Hamilton-Julien did complete the training the next day. We did not see any training report, as was provided for the first course, so we conclude that it was taught largely by way of demonstration rather than participation. It does seem to have been refresher training, rather than a re-qualification, since the original course lasted two days.

47. We also note that she was seen that day by an advanced physiotherapist at MCH House in Gillingham and had the recommended MRI scan. That report [478] shows that there was no evidence of a chronic hamstring tear and she was then referred back for the further 'intense' physiotherapy, as suggested by Ms Arends. She was discharged from the Clinical Assessment Service which was the second line support which had co-ordinated the physiotherapy sessions and scans to date.

Final Occupational Health referral

48. The final referral to occupational health before Mrs Hamilton-Julien was dismissed was on 17 May 2023. This time the tone was rather more pessimistic. It concluded that she was unfit to undertake the full range of her contractual duties and it was recommended that she complete a course of intensive physiotherapy – which seems to have been the phrase adopted - and then be referred back to occupational health for a review and further advice. It mentioned that Mrs Hamilton-Julien had also had an X-ray on her hand in April which showed that the soft tissue damage was still present. Hence, she was still on painkillers even though she was allergic to them. Her left hand dexterity and grip was limited, she limped when walking, had difficulty with stairs and her standing tolerance was restricted to 30 minutes before needing to sit down.

49. At that point she was on a four week phased return to work following some additional absences and that plan came to an end at the end of May. In fact the pattern had become apparent that she was unable to do three consecutive days of work because of the pain and so her absences had increased. According to the author of the occupational health report, it was not possible to predict the duration of the impairment.

50. Subsequently, the further physio sessions began. The first was on 21 June 2023 and the second was planned for 20 September, so they were still widely spaced [543].

The final hearing

51. That is the background to the final hearing on 19 September 2023. The invitation letter was sent on 8 September and explained that it was to review whether there had been any improvements since the previous hearing in April. It was to be held by Ms McGhee, the Hospital Manager at Colchester, and the possible outcomes were a transfer, demotion, dismissal or simply an extension of time. As before, Mr Hocking attended with Mrs Hamilton-Julien.

52. Mrs Hamilton-Julien explained that she still had a lump on her hand and may have a cyst. If so, she would need an operation to remove it. They discussed her duties, which were mainly administrative, and that typing was a challenge as her hand was still painful.

53. Ms McGhee asked about the physio to her leg and whether she was going through a specific course of treatment. Her response was that she had not been given a specific number of sessions, instead 'they incorporate this as needed' [521]. That response is difficult to understand given that she had been allocated a further five-session course of treatment, so there was little clarity about the position. She added that she was now using the walking aid in her work although it was not allowed on the ward.

54. Ms McGhee tried to get more information about the physio, and the exchanges are recorded as follows:

> "LM: … How long have you been having physio in total? It seems as though you have been having it for more than 2 and a half years.
>
> LHJ: It took months and I was referred to intense physio. Approximately it was 9 months after the initial injury."

55. That would indicate that the physio started in October 2021, but in fact there was no physio at all until September 2022 and the more recent sessions had only just started, with one planned the next day.

56. They went on to discuss the things that she had difficulty with at work, and also the medical evidence, which Ms McGhee described and reviewed. She ended by asking how they should continue from here. Mrs Hamilton-Julien said that she thought she should be given the chance to finish the physiotherapy, which would probably take three months. Mr Hocking interjected that he thought three months was reasonable. The main point they made was that these were injuries at work and so Cygnet was responsible. There was no discussion about alternative roles, although we heard that a search was carried out by the company shortly before that hearing, and that Mrs Hamilton-Julien had been able to see the monthly jobs

bulletin throughout. By then, we should add, a decision had been taken that full PMVA training was a requirement across the board at Maidstone.

57. Ms McGhee adjourned the hearing for 15 minutes before coming back and explaining that her decision was to dismiss. She said that Mrs Hamilton-Julien had been having physio for about 2 years without any significant improvement, she had been in a non-budgeted role for 2½ years, at considerable cost, there were no signs of any improvement and in fact she was struggling to do her administrative duties.

58. She went on to announce that Mrs Hamilton-Julien would be dismissed *without notice*. It is difficult to understand how that could have been thought appropriate. Possibly Ms McGhee has more used to holding disciplinary hearings. Her evidence was that she relied on HR advice but the notetaker was an HR Assistant and so perhaps not very experienced. A leavers form was later completed which said that she was entitled to pay in lieu of notice, although that is not what was said at the time, and not what happened. Worse still, Mrs Hamilton-Julien was then escorted off the premises; again, exactly as if she had been guilty of gross misconduct.

59. A week later she submitted an appeal against her dismissal, setting out the events at some length. The main points were that she was a victim of two work-related injuries and was now disabled; also there had been long delays in getting her the equipment she needed, that she was initially denied the use of a walking aid, was made to work in an office in isolation and without easy access to toilet facilities; she was then expected to type one-handed and her request to work from home was refused. She also pointed out that occupational health had recommended a course of intensive physiotherapy and that she had only had one session before she was dismissed. She had NOT, she insisted, been having physio for 2 ½ years.

60. Apart from the home working, these were all the points emphasised to us in her closing submissions. For completeness, she added that she was made to administer medication three times a day for which she had to stand, or at least that she was refused a chair to sit in. She did not say when this was or who refused to allow it. (Ms Nola left in about September 2022).

61. That appeal document led to a meeting with Mr Soper, the Operations Director for London Hospitals, on 19 October 2023. He approached the appeal as a review of the previous decision, rather than a root and branch reassessment, but the main issue was whether her current treatment was likely to be effective.

62. He asked her how she could be certain that two or three months of physiotherapy would help and she said, " I don't know. I requested this out of desperation and optimism. I just wanted the opportunity to see if this would help." [579]

63. He also explored with her the timing of these treatments and why they were so far apart - which was because of the waiting list. They were carried out at the clinic in Gillingham and the next appointment was on 25 October. In between these appointments she had exercises to do.

64. He did not give her a decision there and then but set it out in a letter on 27 October [590]. The main point was that he did not believe that there was a realistic prospect that she would be fit enough to return to full duties within a reasonable time frame given that the original injury was more than 2 ½ years ago.

Applicable Law

65. We will set out the relevant legal tests first beginning with unfair dismissal.

Unfair Dismissal

66. This important right is set out in s. 94 Employment Rights Act 1996 (ERA), and by s. 98 the employer has first to show a fair reason for the dismissal, in this case capability. It is not disputed that that was the reason. If that is shown, then by s. 98(4):

> "… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) —
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case."

67. 'Capability' is a broad term and can cover dismissals, such as this, on health grounds or due to absence. The essential question in cases of long-term absence, as made clear by the Employment Appeal Tribunal in **Spencer v Paragon Wallpapers Ltd** 1977 ICR 301, EAT, is whether the employer can be expected to wait any longer for the employee to return. The situation is much the same in this case. The essential question is how long the employer should have been expected to wait until Mrs Hamilton-Julien was able to pass the PMVA course and resume her normal duties.

68. There is further guidance on long-term absence cases from the Scottish Court of Session in **BS v Dundee CC** [2014] IRLR 131, which set out the sort of factors to be taken into account. These include:

    (a) whether other staff were available to carry out the absent employee's work

    (b) the nature of the employee's illness

    (c) the likely length of her absence

    (d) the cost of continuing to employ the employee

    (e) the size of the employing organisation; and (balanced against those considerations)

    (f) the unsatisfactory situation of having an employee on very lengthy sick leave.

69. That case also made clear that, although the tribunal has to consider and weigh these factors, it should not simply then substitute its view for that of the responsible managers. It also has to ask whether the decision to dismiss within the range of reasonable responses open to an employer in the circumstances. That is a well-established principle in all types of unfair dismissal claim.

70. There is one specific aspect to this claim which is that it relates to injuries at work. The relevance of that was considered by the Employment Appeal Tribunal in the case of **Frewin v Consignia plc** [2003] All ER (D) 314 (Jul), to which we were referred. Subsequently that case was considered by the Court of Appeal in **Royal Bank of Scotland v McAdie** 2008 ICR 1087, CA. The headnote to the decision by Lord Justice Walls states:

> "An employer who, however culpably, has caused or contributed to the incapacity of an employee is not thereby precluded for ever from executing a fair dismissal, pursuant to section 98(2)(a) of the Employment Rights Act 1996, on the ground of the employee's incapacity to perform his work. The question is whether it was reasonable, in the circumstances as they were at the time of dismissal, for the employer to dismiss the employee even when it was the employer's conduct that had caused, or materially contributed towards, the employee's incapacity."

71. In short, the Court accepted that it may be necessary to 'go the extra mile' in such circumstances; for example, being more proactive in finding alternative employment for the employee or putting up with a longer period of sickness absence.

Discrimination arising from disability

72. The test under section 15 Equality Act is as follows:

> (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.

73. So, this involves unfavourable treatment - the dismissal - as a result of something arising in consequence of Mrs Hamilton-Julien's disability – her inability to pass the PMVA course. The main issue is whether the decision was justified, i.e. whether the company can show that it was a proportionate means of achieving a legitimate aim. The company says that the aim was to ensure that her duties were carried out in a risk-free manner.

74. In **O'Brien v Bolton St Catherine's Academy** 2017 ICR 737, the Court of Appeal considered a case of long-term absence and held that the test of proportionality under section 15 is essentially the same as the test of reasonableness in unfair dismissal cases. Lord Justice Underhill said at paragraph 53:

> "… it would be a pity if there were any real distinction in the context of dismissal for long-term sickness where the employee is disabled within the meaning of the 2010 Act. The law is complicated enough without parties and tribunals having routinely to judge the dismissal of such an employee by one standard for the purpose of an unfair dismissal claim and by a different standard for the purpose of discrimination law."

75. That also seems to us an appropriate yardstick in the circumstances of this case. It involves essentially the same balancing exercise.

Failure to make reasonable adjustments

76. The phrase "reasonable adjustments" has entered the language. Almost everyone knows that employers have a duty to make reasonable adjustments for people with disabilities. But the duty is not as straightforward as most people imagine. There are a number of stages to be worked through and these are set out in sections 20 and 21 Equality Act. According to section 20(3), and breaking it down into its component parts, there is:

> "… a requirement,
>
> where a provision, criterion or practice of [the employer]'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. …

77. The key phrase here is the "provision, criterion or practice" - often abbreviated to PCP. It is a very broad phrase. A provision might be a specific rule, or a policy. It might be an expectation of some sort, or the working arrangements or just the way things are usually done. The PCPs in question here are the requirements:

    (a) to complete the PMVA training;

    (b) to come into the centre to work (i.e. not to allow home working);

    (c) to stand up for long periods.

78. We need to decide whether each of those PCPs was applied and if so whether it placed Mrs Hamilton-Julien at a substantial disadvantage, and 'substantial' for these purposes is defined as 'more than minor or trivial'. If there is such a disadvantage there is an obligation on the employer to make reasonable adjustments to overcome that disadvantage. There is no obligation on the employee to identify what would be a reasonable adjustment, but the suggestions in the list of issues include:

    (a) allowing her to remain on lighter duties until she was able to complete the training and return to the ward;

    (b) redeploying her to a role where the training would not be required;

    (c) allowing her to work from home; or

    (d) ensuring that she took on a role where she was able to sit down and take breaks from standing.

Conclusions

Unfair dismissal

79. Turning to our conclusions, we will start with the complaint of unfair dismissal. The situation here is not quite the same as an employee on long-term sickness absence. In that sort of situation there is no extra cost to the employer in terms of wages, but there is extra strain on the rest of the team or the department, or a loss of productive activity and perhaps sales or, in a health context, longer waiting lists

or poorer care. Here, there was no such impact on service because the company was bearing the cost of an extra employee throughout. That was a considerable burden to carry. Given the length of time in which Mrs Hamilton-Julien was being supported in this way the direct cost in wages was well over £100,000.

80. The main counter-argument is that this was a work-related injury and so the employer was in some way duty bound to do so, obliged to go the extra mile. That is true in a general sense, but we would introduce a word of caution. We heard no detailed evidence about the circumstances of the original accident. It happened at work, in the course of carrying out physical exercises, but it does not follow that the employer was negligent or that there was any failure to take appropriate care or safety measures. Accidents do happen, and the degree of fault may also be shared rather than placed entirely on one person's shoulders. No complaint was made about it at the time, and we did not hear of any personal injury claim. (Clearly the falling shelf that caused the wrist injury was not the fault of Mrs Hamilton-Julien to any extent, but that was not the main cause of her dismissal.)

81. It should not be assumed therefore that there is any general or overriding duty on the employer to continue to employ someone in Mrs Hamilton-Julien's position while continuing to employ a replacement. That can only ever be a temporary arrangement and in fact it seems to us that in this case it is an arrangement that went on for extremely long period with no obvious sign of improvement at any stage.

82. That is not to say that Mrs Hamilton-Julien was at fault but it does seem to have been a deteriorating picture. Reviewing events, there was an initial injury which did not seem very serious at first. There was little treatment and she soldiered on at work. But things got worse rather than better. Whatever the reason, it is clear that there was a downward trajectory. For most of 2021 she was carrying out a wide range of duties on the ward and even accompanied the patient in the van for 90 minutes. By July 2022 she was struggling with stairs. By 2023 she needed a walking aid and wanted to work from home to avoid any travel.

83. It may be that her age or other health problems played a part in this downward spiral. The pain in her leg perhaps may have meant that she was doing less walking, less movement generally, and so it became more difficult to tackle the stairs and keep mobile. It may be that her mental health was affected. The wrist injury affected all sorts of day to day activities including preparing food. Whatever the reason, her position clearly deteriorated steadily.

84. The only prospect of any improvement came from the physiotherapy she received although the first batch did not begin until a late stage, September 2022. That was

after the first review meeting when she had been given three months to pass the PMVA training, and shortly before the second review meeting which had been arranged to take stock of matters at the three month point. No formal meeting was arranged at that stage with dismissal as a possible outcome and it would have been more difficult to justify given that she had just started the physiotherapy. Nevertheless, physiotherapy was the only possible solution from then on.

85. It appears from the dates we have been able to glean from the documents that the original course of physiotherapy was concluded by February 2023, when Ms Arends made her report, so the sessions seem to have been at approximately monthly intervals. We know that they occurred in September, October and November 2022. We also know that the effect was 'only little improvement'. Whatever improvement was observed at the time, the broader picture was that she went on to require a walking aid.

86. That was the background to the second round of physiotherapy, and although it was described as intense or intensive physiotherapy it also seems to have been provided at approximately monthly intervals. In fact the first session was in June 2023 and the second on 20 September, the day after her dismissal.

87. There may have been some confusion or miscommunication about the extent of physiotherapy since Ms McGee was left with the understanding that the treatment had been ongoing for over two years, but the correct position was hardly more positive. Essentially the first round of treatment had not worked and a very similar round of treatment had just begun.

88. The object of the physiotherapy was not of course to enable her to pass the PMVA course but simply to improve her condition, to reduce the pain and improve her mobility. That is a far cry from being able to complete an additional 3 day training course involving grabs and holds and restraint against a potentially violent patient.

89. Nor does not seem that even Mrs Hamilton-Julien had any great confidence in ever reaching that level, since she described it as a case of desperation and optimism. Nothing more solid or persuasive could be put forward.

90. Clearly there was a recommendation from occupational health to wait until this course of treatment had been completed. So, on the face of it, Ms McGhee went against occupational health advice. However, it would have been surprising if they had said anything else, if they had suggested for example that it was not worth waiting until the treatment had concluded before reaching a decision to dismiss. All the occupational health advisor had to go on was the fact that this course of treatment was in progress and had presumably been recommended, but it is hard to see how any reliable view could be formed about the prospects of a successful

recovery to the required standard. Ultimately, this was just advice, and the advisor did not need to balance the competing considerations in the same way that Ms McGhee did, or Mr Soper.

91. By the time of the appeal Mrs Hamilton-Julien had completed two of the further sessions of physiotherapy, with three remaining. She could still not suggest at that stage that there had been any improvement and so we cannot see any real grounds for optimism. Although the situation has to be judged at the time, we were not shown any evidence to suggest that Mrs Hamilton-Julien has improved her mobility since then or has even been able to take up employment over the two years since her dismissal.

92. Drawing those threads together therefore, this was a very long period of absence, sustained at considerable cost to the employer where there was in reality no realistic prospect of an improvement. It might have been kinder, or more cautious, to have allowed a further three month period to elapse, but it is very difficult to say that waiting two years and 8 months was unreasonable whereas two years and 11 months would not have been.

93. If we are wrong in that conclusion and it was unfair to dismiss Mrs Hamilton-Julien at the time, we would also have to go on to consider the prospect that the additional three months would have allowed her to return and pass the PMVA course. On the evidence we have heard that seems an extremely remote possibility.

94. For completeness there are some additional points to deal with from the list of issues. Reviewing that list now it does not align very well with the evidence we have heard. There was for example no real criticism of the procedure adopted by the company or any alleged breach of the ACAS Code of Practice on disciplinary and grievance procedures.

95. Another issue is whether it was fair to dismiss given that she had only been given a single warning prior to her dismissal, presumably a reference to the meeting in June 2022. That message was in fact reinforced in September 2022 and the company showed a good deal of forbearance after that since it took over a year further before a decision was reached to dismiss. The discussion about redeployment also took place in the context of an alternative to dismissal and so we can see no real basis to conclude that Mrs Hamilton-Julien did not have proper warning that her time was running out.

96. There was also an allegation that although she was unable to complete the PMVA training she was still capable of carrying out a role as a mental health nurse. That argument was not pursued and it was never suggested that the company should

simply have waived the requirement to complete the training course. In fact it was clear from Mrs Hamilton-Julien objections to a transfer to Roseacre that she felt that she would not be safe there unless and until she had completed that training.

97. There is also a reference to culpable conduct on her part there which seems mistaken. There is no question of any blame on her part.

98. The only issue which did concern us was the manner of her dismissal and in particular the fact that she was dismissed without notice. At this distance in time, two years after that meeting, the impact of that demeaning process and the financial shock to Mrs Hamilton-Julien of finding herself suddenly out of work will have faded to a degree, but this was very wrong. Shocking would not be putting it too high. That notice pay has since been paid and the claim of wrongful dismissal withdrawn, but it leaves a sense in which Mrs Hamilton-Julien was blamed for the situation in which she found herself. Again, she was not to blame and it raises a question as to whether this action so tarnished the dismissal as to make it unfair or an act of discrimination.

99. Having reflected on that aspect, we conclude that it was simply done through a lack of experience. The company certainly did not intend to humiliate Mrs Hamilton-Julien, they just seem to have assumed that that was the appropriate procedure. If any lesson is to be learnt from this case it is that dismissal without notice should only be done in cases of gross misconduct.

100. Overall however, and having satisfied ourselves on that point, we remain firmly of the view that dismissal was justified in the circumstances.

Discrimination arising from disability

101. As mentioned already, a claim of discrimination arising from disability involves a question of justification, of whether the decision was a proportionate means of achieving a legitimate aim, and that appears to be the only issue here. And again, given the guidance provided in the **O'Brien** case, the same standard of fairness applies as to a complaint of unfair dismissal. Essentially the same balancing exercise is required. And given that we have already made very firm conclusions in relation to the unfair dismissal complaint, it is not necessary to elaborate things any further. There is simply no basis for this claim to succeed where a claim of unfair dismissal has failed.

Failure to make reasonable adjustments

102. The final claim is failure to make reasonable adjustments. There was in fact no dispute that the first two PCPs were applied, i.e. the requirement to take PMVA

training and to work from the hospital. The third one, being required to stand up for significantly long periods, was not accepted.

103. A PCP has to be something of general application, not just something applied to an individual. The complaint about a chair in the dispensary is a very specific allegation whereas the PCP is framed in very broad terms, that there was a general requirement at work for staff to stand up for long periods. We do not accept that that was the case, but if we are wrong in viewing matters in that way, the proposed reasonable adjustment was to allow her to sit down and we do not accept, factually, that Mrs Hamilton-Julien was obliged to work in a standing position for any such period. She seems to have wanted to work in the dispensary as an example of the sort of general nursing work which she could still engage in but we are quite satisfied that if she ever said that she was struggling to do that work that she would have been able to discontinue it.

104. Of course, from November 2022 onwards, when she had the wrist injury, she was working upstairs on admin duties only. Any such discrete allegation is likely therefore to be substantially out of time.

105. As to the other two PCPs, Mrs Hamilton-Julien now accepts that it would not have been reasonable to allow her to work from home, so we need not consider that any further. There is no reason to conclude that she was placed at a substantial disadvantage since she was in fact able to work at an office on the first floor in safety.

106. The main PCP is therefore the requirement to undertake the PMVA course. We did wonder about how realistic it was for all members of staff to be able to complete a physical training course of this sort but in fact it was never disputed at this hearing that that was an appropriate requirement and the only issue is essentially how long it would take for Mrs Hamilton-Julien to do that.

107. The proposed reasonable adjustment for this PCP is simply to allow her to remain on light duties until she was able to complete the training, which of course is what happened. The only question is how long it is reasonable to wait, and that is the question already answered in relation to the other claims.

108. Overall therefore, we accept that the employer did all that was reasonable to accommodate Mrs Hamilton-Julien's difficulties and so this claim too must be dismissed.

Employment Judge Fowell

Date 30 October 2025

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