EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT		**RESPONDENT**
GABRIELA BOLOHAN	**V**	**SOLWAY FOODS LIMITED**

HELD AT CARDIFF **ON: 13, 14, 15, 16 & 17 APRIL 2026**

BEFORE: EMPLOYMENT JUDGE S POVEY

REPRESENTATION:
FOR THE CLAIMANT: **IN PERSON**
FOR THE RESPONDENT: **MR BRONZE (COUNSEL)**

JUDGMENT having been sent to the parties on 22 April 2026 and written reasons having been requested in accordance with Rule 60(4) of The Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Background

1. This is claim by Gabriela Bolohan ('the Claimant') against her employer, Solway Foods Limited ('the Respondent').

2. The Claimant brings complaints of direct discrimination on grounds of sex and breach of the duty to make reasonable adjustments. The complaints are resisted in their entirety by the Respondent.

3. At a Case Management Hearing 26 September 2025, before Employment Judge Webb, the parties agreed a List of Issues and directions were made to prepare the case for the final hearing. The parties confirmed at the outset of the final hearing that the List of Issues represented the issues which I had to determine, save that it is no longer in dispute that, at the relevant time, the Claimant was disabled, as defined by the Equality Act 2010 ('EqA 2010'), by reason of Reynaud's Syndrome.

The final hearing

4. The final hearing was conducted over five days in Cardiff. I heard oral evidence from the Claimant, from her partner & co-worker, Petru Ghiarasim, and from her daughter, Beatrice Ioan. Both the Claimant and Mr Ghiarasim gave evidence via a court-appointed Romanian interpreter (Ms Mirina). The interpreter was also utilised by the Claimant throughout the hearing.

5. For the Respondent, I heard evidence from the following employees:

    5.1. Debidyuti Sen (HR Advisor)

    5.2. Lisa Lewis (Factory Shift Manager)

    5.3. Paul Kennedy (Operations Manager)

6. Each witness I heard from adopted their written statement. I was provided with a paginated and indexed bundle of documents ('the Bundle') and, by agreement, additional documents ('the Supplementary Bundle'). I also received oral and written submissions from Mr Bronze for the Respondent and written submissions from the Claimant.

7. The Claimant represented herself. I explained the processes and procedures to her, checked her understanding, encouraged her to ask questions and gave guidance throughout. I was satisfied that the Claimant was able to fully engage in the hearing and present her case to the best of her abilities. Indeed, I was impressed by the manner in which the Claimant conducted herself throughout what is undoubtedly a daunting and stressful process.

8. I was grateful to the Claimant, to Mr Bronze and to the Respondent's solicitors for the assistance they have provided and the work they have undoubtedly undertaken both before and during the hearing. I was grateful to all the witnesses, including the Claimant, who attended and answered the questions asked of them. Finally, I record my gratitude to Ms Marina for her expert interpretation services.

9. In reaching my findings and conclusions, I had full regard to all the evidence seen and heard, and the submissions I received.

The relevant law

Discrimination

10. Section 39(2) of the EqA 2010 states:

> An employer (A) must not discriminate against an employee of A's (B)—
>
> (a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

11. Direct discrimination is defined by section 13(1) of the EqA 2010, and states as follows:

> A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

12. The "relevant protected characteristics" include sex (per section 11 EqA 2010).

13. Direct discrimination is a comparative exercise. The circumstances of a comparator must be the same as those of the Claimant, or not materially different (per section 23 of EqA 2010). The circumstances need not be precisely the same, provided they are close enough to enable an effective comparison: Hewage v Grampian Health Board [2012] UKSC 37 .

14. The important thing to note about comparators (whether actual or hypothetical) is that they are a means to an end. The crucial question in every direct discrimination case is what is the reason why the claimant was treated as he was? Was it because of the protected characteristic? Or was it wholly for other reasons?: Shamoon v Chief Constable of Royal Ulster Constabulary [2003] UKHL 11

15. Section 20 of the EqA 2010 sets out the duties to make reasonable adjustments in respect of disabled persons. So far as relevant, section 20 states:

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature 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.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.
…

16. Schedule 8 to the EqA 2010 provides more details as to the duty to make reasonable adjustments. In addition, section 212 EqA 2010 defines "substantial" as "more than minor or trivial."

17. Whether a proposed adjustment is reasonable is an objective test, having regard to the circumstances of the particular case. The focus is on the practical effect of the measure proposed. The Equality & Human Rights Commission's Code of Practice on Employment at Paragraph 6.28, sates as follows:

> 6.28 The following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:
>
> - Whether taking any particular steps would be effective in preventing the substantial disadvantage;
> - The practicability of the step;
> - The financial and other costs of making the adjustment and the extent of any disruption caused;
> - The extent of the employer's financial or other resources;
> - The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
> - The type and size of the employer.

18. If a person fails to comply with the duty to make reasonable adjustments, that person discriminates against the disabled person (per section 21 EqA 2010).

Standard & burden of proof

19. The standard of proof in discrimination cases is the balance of probabilities. The burden of proof in discrimination complaints has two stages, as follows (per section 136 of the EqA 2010, Efobi v Royal Mail Group Ltd 2021 ICR 1263, SC; Madarassy v Nomura International plc [2007] IRLR 246 & Igen Ltd (formerly Leeds Careers Guidance) v Wong 2005 ICR 931, CA):

    19.1. The Claimant has to prove facts from which the Tribunal could infer that discrimination has taken place;

    19.2. If so, the burden 'shifts' to the Respondent to prove that the treatment in question was in no way because of a protected characteristic.

20. Mere assertions of discrimination are insufficient. There must be evidence (whether actual or circumstantial) that links the treatment to the protected characteristics (per Efobi, above). A difference in status and a difference in treatment are not sufficient on their own to create a prima facie case of discrimination. There must be "something more" (per Madarassy, above).

Findings of fact

The oral evidence

21. I begin with some observations on the oral evidence that I heard.

22. I found that all the witnesses I heard from tried to assist the Tribunal to the best of their abilities. I did not find that any witness was obstructive or deceitful. However, there were a number of factual disputes between the Claimant and the Respondent's witnesses which I had to resolve. That is one of my roles. I have done so based upon the evidence provided to me and mindful that the events discussed occurred over a year ago.

23. I also reminded myself of the limitations and challenges of memory. I will explain why I have preferred one account to another. It will invariably have been because of my assessment of evidence which arose much closer in time to the events in dispute. Recollections may be genuinely held but the events to which they relate have, in reality, been misremembered, a trait which is far more common that many realise. I also recognise that recollections, even inaccurate ones, can become more certain and more entrenched when challenged, as is the case in tribunal proceedings that, like here, involve some factual disputes.

24. I found the Respondent's witnesses to be credible (in that they genuinely believed in the evidence they were giving) and reliable (in that I could place weight on the evidence they gave). That was because their evidence was broadly consistent, measured and, importantly, often supported by the contemporaneous documentary evidence in the Bundle. As such, I was able to place weight on the oral evidence of the Respondent's witnesses.

25. In contrast, I had a number of concerns as to the reliability of the Claimant's evidence. I was prepared to accept that her evidence was credible (in that she genuinely believed that her evidence was true). However, aspects of her evidence were either not supported by the contemporaneous doc evidence or, at times, contradicted by the contemporaneous documentary evidence.

26. When presented with the documentary evidence in the course of her oral evidence, the Claimant's tendency was to avoid answering questions or simply deny what the documentary evidence clearly showed (which extended to unfounded and unsupported allegations that certain documents had been fabricated). In my judgment, the Claimant was struggling in the face of cogent documentary evidence which contradicted

her own recollections. That too adversely impacted upon the reliability of the Claimant's recollections. For all those reasons, I was unable to place the same amount of weight on the Claimant's evidence as I could on the Respondent's.

27. I have only made findings necessary to determine the issues before me. The Claimant raised a number of other matters, which were not relevant to what I had to decide and it was no part of my function to consider and decide them.

The relevant findings

28. The Respondent is part of the 2 Sisters Food Group and has its site at Rogerstone, Newport. As described by Mr Kennedy in his statement (at Paragraph 1):

> The Rogerstone Site is one of Europe's largest and most advanced food factories, purpose-built for the production of chilled and frozen recipe meals. The Rogerstone Site employs approximately 1,600 people who produce a variety of chilled ready meals, including Indian and Oriental, Italian, traditional British, nutritionally controlled, and children's ranges.

29. The Claimant was employed as a Food Production Operative on a 7-day per fortnight shift pattern, equating to 39 hours per week. Her employment started on 29 July 2024 and is continuing (per the offer of employment, at [70] of the Bundle). The work of an operative was again helpfully summarised in Mr Kennedy's statement (at Paragraph 3):

> The role of an operative involves working on the assembly line, where duties include handling, trussing, cutting, and packing food products for distribution to our customers.

30. It was not in dispute that when the Claimant's employment started, she did not report any illnesses, impairments or disabilities which might affect her work or be made worse by her work, nor did she report needing any adjustments to do her job.

31. The Claimant was initially allocated to the Dolly Up area of the site, where operating temps were between 0 – 5 degrees Celsius. Her duties included packing stacking, sleeving and handling chilled and frozen products.

32. In or around October 2024, the Claimant informed the Respondent that she was experiencing dizziness, pain, fever, and muscle and bone pain. The Respondent referred her to occupational health ('OH'), who held a consultation with the Claimant and produced a report dated 7 October 2024 (at [99] of the Bundle). The Claimant told OH that she experienced pain on lifting. OH recommended that the Claimant was fit to continue sleeving products but lifting should limited to a maximum weight of 5 kgs. The Claimant was also advised to report any further dizziness to her manager.

33. As a result, the Respondent assigned the Claimant to sleeving duties, where the products weighed well below 5kgs.

34. In November 2024, the Claimant informed the Respondent of issues she was facing with her health because of the cold working conditions. She did so in the following ways:

    34.1. In the course of a grievance she raised, which resulted in a hearing on 19 November 2024 with Alan Rose (operations manager at the time), where the Claimant referred to concerns regarding her health as a result of working in the cold and asked to move to the Potato Plant (at [108] – [110] of the Bundle). The Respondent agreed to address the Claimant's concerns, make further enquiries (including with OH) and to manage the Claimant's exposure to cold working environments by relocating her temporarily to the Pod, until the Respondent had received further advice from OH (which, as recorded in the notes of the grievance meeting on 19 November 2024, the Claimant said she was "ok to work in"). The Pod was an area where chilled products are sleeved, packed and stacked, rather than frozen products

    34.2. Providing a fit note dated 29 November 2024, which reported that the Claimant had a cough which was being triggered by cold air and included the suggestion that the Claimant not work in cold areas (at [111]).

35. Ms Lewis returned as the Claimant's line manager from December 2024 (having been temporarily relocated to Recruitment as she recovered from an injury, during which time, the Claimant had commenced employment with the Respondent). Upon her return, the Claimant asked Ms Lewis about being moved to Line 11 (where her partner worked). However, this would have entailed a return to the very low temperature environment from which the Claimant had experienced problems with her health and from which she had been moved. For those reasons, Ms Lewis did not approve the Claimant's request to move to Line 11.

36. In or around December 2024, the Claimant was diagnosed with Reynaud's Syndrome and informed the Respondent. She also made a request on 19 December 2024 to be moved to a warmer environment, following her diagnosis (at [114] of the Bundle). That request was sent to Karen Morris, of the Respondent's HR team. The Claimant chased Ms Morris on 24 January 2025, as she had received no reply. Ms Morris responded to the Claimant's request later the same day, indicating that she was in fact absent from the business and, as such, had forwarded the Claimant's request to Ms Sen (at [115]).

37. The Respondent had by then arranged an OH appointment for the Claimant, for 11 Dember 2024, resulting in a further OH report dated 29 January 2025 (at [129] of the Bundle). In it, OH recommended that whilst

the Claimant was fit for work, she should be moved to a warmer working environment.

38. On 5 February 2025, the Claimant was issued with a fit note by her GP, citing Reynaud's Syndrome, palpitations, bony pains and shortness of breath, with the recommendation of moving to a warmer environment.

39. On 6 February 2025, the Claimant attended a welfare meeting with Ms Lewis and Ms Sen (at [131] – [134] of the Bundle). The minutes, which were taken by Ms Sen, recorded the following relevant exchanges:

    39.1. On several occasions, the Claimant said that she wanted to be moved to the lines where her partner worked.

    39.2. Ms Lewis explained that the Claimant had been moved to the Pod at her request and to reflect her health issues. Her partner worked in packing and stacking, which was contrary to the Claimant's health issues with lifting.

    39.3. Upon being told that the Pod was a warmer area and that it was not appropriate to move the Claimant to where her partner worked, the Claimant shared the following with Ms Lewis:

> The only option given was Pod, but its still cold and frozen, I went to A n E after work on Sun[day] and was told that due to me working in the cold, my heart may stop. On the line I'm moving but in pod I am standing and sleeving and its very cold

    39.4. Ms Lewis recorded her concerns at this information and, after taking HR advice, placed the Claimant on medical suspension, wherein she would be suspended from work on medical grounds but paid her full wage, whilst the Respondent investigated how to move forward.

40. The decision to place the Claimant on medical suspension was confirmed in writing (per the letter of 28 February 2025, at [151] of the Bundle). The letter confirmed that the reason for the suspension was for the Respondent to "*conduct a detailed risk assessment to ensure both your fitness for work and your health and safety in the workplace."*

41. In the course of her oral evidence, the Claimant alleged that the minutes of the meeting of 6 February 2025 were inaccurate, in that she did not say that her heart was at risk of stopping. Rather, the Claimant recalled raising concerns about her circulation and other organs, including a problem with her heart from working in cold conditions.

42. I preferred the Respondent's recollection that the Claimant had told Ms Lewis in the meeting on 6 February 2025 that she had been told that her heart was at risk of stopping in cold conditions. I do so for the following reasons:

42.1. I accepted Ms Sen's evidence that she attended the meeting on 6 February 2025 as note taker (as well as HR support) and that the minutes in evidence arose from her contemporaneous notes. As such, they were likely to be a far more accurate record of what was said.

42.2. The Claimant was provided with an internal interpreter for the meeting (another employee who spoke fluent Romanian and English). There was no evidence and no reason to believe that the interpreter would have mistranslated, deliberately or accidentally. The Claimant did not suggest that any other material part of the minutes were inaccurate.

42.3. The Respondent's response was consistent with being told such a concerning piece of medical information, namely to immediately place the Claimant on medical suspension. That was both consistent with being told that the Claimant was at significant risk if she continued to work at cold temperatures, and appropriate.

42.4. A subsequent OH report (of 26 March 2025) included the following, wholly consistent record (at [186] of the Bundle):

> She [the Claimant] stated that she has been advised by both her GP and A+E that when working in or staying in cold areas her heart could stop. She states she was advised of this at the end of January 2025.

42.5. In a meeting with Mr Kennedy and Nathan Morgan of HR, also on 26 March 2025, the Claimant informed them that there was no longer an issue with heart and the following exchange took place (at [192]):

> [Nathan Morgan]: I just wanted to question about the heart condition. In the report from Ceri [OH nurse] it clears says you said your heart would stop. Can I get more detail on why you are saying you do not have a heart issue now.
>
> [The Claimant]: No, there isn't anything wrong with my heart. I went to the doctor because I was having problems with it. A nurse checked me out and said I may have a blood clot. Due to this, they said my heart could stop at any time. When I went to the doctors, they told me it wasn't anything to do with my heart and they thought it was a pulmonary embolism (Lung issue). But they couldn't find anything for that.

43. For all those reasons, I found that the Claimant did tell the Respondent on 6 February 2025 that she had been advised that her heart could stop if she was in a cold environment. In any event, the parties did agree that the Claimant had raised issues regarding her heart from working in cold temperatures (even if, as the Claimant now suggests, she did not say her heart was at risk of stopping). In my judgment, it was appropriate for the Respondent to suspend the Claimant on full pay, in order to investigate further what could be done to assist the Claimant with her working environment.

44. Also on 6 February 2025, Ms Lewis held a welfare meeting with Mr Ghiarasim (which was also attended by Ms Sen as HR support and note taker; the minutes of the meeting were at [135] – [136] of the Bundle). The purpose of the meeting was recorded as follows:

> Petru has submitted a workplace adaption form from his GP about moving to warmer environment or wearing warm gloves

45. Mr Ghiarasim had arthritis in his fingers and toes, which were affected by the cold working conditions. At the time, he was working on Line 11 in Dolly Up. Mr Ghiarasim explained that he had applied to move to the Potato Plant but had so far been unsuccessful but was prepared to continue working on Line 11. He also expressed a wish that the Claimant move with him, to which Ms Lewis responded as follows:

> You may be a couple but here you are individuals. Gabriela has serious medical issues, and she isn't fit to work in dolly up at all, so we will move her straight away where we can and we may not be able to move you both together.

46. Mr Ghiarasim continued applying for a move to the Potato Plant via the recruitment team and was soon successful in his application, moving in or around March 2025.

47. As part of the investigative process undertaken by the Respondent into the Claimant's health and working environment (following her medical suspension), the Claimant was referred back to OH. There was a report in evidence dated 14 February 2025, following an alleged telephone consultation with the Claimant of the same date (at [123] of the Bundle). The Claimant claimed in her oral evidence that the consultation never took place and the report was fabricated. There was no evidence at all to support that allegation. In contrast, there was a viable and wholly consistent OH report dated 14 February 2025, which referred to a telephone consultation with the Claimant of the same day. The Claimant did not suggest that the rest of the report was inconsistent with her own health conditions, or the history of the health and working environment up to that point. Obtaining a further report was also consistent with the decision on 6 February 2025 to medically suspend the Claimant and then undertake further investigations into her health needs.

48. In addition, the further OH report of 26 March 2025 (discussed further below), which the Claimant took no issue with as to its authenticity, included the following (at [186] of the Bundle):

> Ms Bolohan was shown the OH physicians report following her appointment with him in February 2025.
>
> She agreed with the content of the report but requested information relating to the meaning of the Equality Act 2010 which was provided to her during the consultation.

She otherwise agreed with the content

49. As such, there was contemporaneous, corroborative evidence of the Claimant not only attending a consultation with OH in February 2025 but thereafter agreeing the content of the report of the same date, when she met with OH again on 26 March 2025.

50. For all those reasons I found that the Claimant did meet with OH on 14 February 2025 and the subsequent report was genuine. It included the opinion that the Claimant was not currently fit to work in her own substantive role or in a modified or restricted capacity (at [124] of the Bundle).

51. As stated, the Claimant met with OH again on 26 March 2025, whose opinion, after recording the extensive discussions held with the Claimant about her health conditions, was that she remained unfit for work in any capacity due to ongoing symptoms (at [187] of the Bundle).

52. The other part of the proposed plan (upon the Claimant being medically suspended) was to try and find an alternative location within the site for her to work, having regard to her various health conditions. Mr Kennedy was asked to undertake risk assessments into alternative locations that could be considered for the Claimant to work in, having regard to her issues with the cold, with lifting and with her health generally. As such, he conducted detailed risk assessments of the Meat Preparation Department and later the Potato Plant. In my judgment, both assessments (which were in evidence, at [165] – [173] & [174] – [185] of the Bundle, respectively) were comprehensive, informed and reached reasonable and practical conclusions.

53. In short, based on the Claimant's health at the time, the Meat Preparation Department was not considered to be a safe environment for her. Mr Kennedy also noted a number of hazards in the Potato Plant regarding working at height (the Claimant had reported dizziness and fatigue), manual handling (the Claimant had restrictions on what she could lift) and use of steps to gain access to production areas (again, because of the Claimant's dizziness and fatigue).

54. As noted above, this was all taking place at a time when the advice being provided to the Respondent by OH was that the Claimant was unfit for work in any capacity.

55. Mr Kennedy met with C on 26 March 2026 to discuss the contents of the OH report of the same date (a meeting also attended by Nathan Morgan of HR, who acted as note-taker, the minutes of the meeting being at [188] – [193] of the Bundle). The meeting lasted over an hour and during it, Mr Kennedy discussed with the Claimant her health conditions and how they affected her. It was clear from the minutes of the meeting that Mr Kennedy undertook a detailed and thorough investigation into the Claimant's

various health conditions, and into the ways they impacted upon her ability to work.

56. In the course of that meeting, the Claimant reiterated that she wanted to be moved to work with her partner, who had relocated to the Potato Plant. As noted earlier, she stated that after further tests and investigations, there was no risk of her heart stopping. The Claimant also said that she agreed with the OH report of 26 March 2025 but believed she was fit for work as long as it was a warm environment.

57. Mr Kennedy succinctly summarised what had been discussed with the Claimant during the meeting as follows (at [191] of the Bundle):

> Just to sum up what we have been speaking about, as I [am] risk assessing the different areas, there are areas colder than others that you don't believe you could work in. Some activities in the warmer environments are not suitable for you due to heavy lifting and the cold products. You do not believe gloves would be sufficient in mitigating the risk of your medical issues. Ceri and the Occupational Health practitioner report align with their views and what they have told you and agree you are currently unfit for work. You, however, believe that you could be fit if you went into a warm environment. Along with the Raynaud's you have joint pain, dizziness and issues with joints locking up. This is the reason we are risk assessing the business.

58. In light of the fact that the Claimant was no longer at risk because of her heart, coupled with the OH advice that the Claimant was not fit to undertake her substantive role, Mr Kennedy also took the decision to lift the medical suspension and transfer the Claimant on to normal sickness absence (for which she would be required to produced fit notes and adhere to the Respondent's Absence Policy & Procedure, at [80] – [89] of the Bundle). That also resulted in her moving to statutory sick pay('SSP'). Mr Kennedy informed the Claimant of that decision during the meeting on 26 March 2025 and it was confirmed in writing by a letter dated 28 March 2025 (at [199]).

59. On 7 April 2025, the Claimant raised a grievance about her treatment, including, but not limited to, being placed on SSP and alleged failures to implement reasonable adjustments (at [203] – [204] of the Bundle). On 14 April 2025, the Claimant also raised a complaint and asked to be transferred to the Potato Plant (at [207] – [208]).

60. On 16 April 2025, the Claimant started ACAS Early Conciliation.

61. The Claimant had a further assessment with OH on 14 May 2025. The report of the same date was comprehensive and advised that the Claimant was fit to be working but with modifications and adjustments in place (at [232] – [235] of the Bundle). On 16 May 2025, the Claimant attended a welfare meeting with Alan Rose (another Operations Manager, who attended in place of Mr Kennedy, who had to leave work on that day at short notice) and Mr Morgan from HR. On the basis of the latest OH report and Mr Kennedy's risk assessments, the Respondent was now able to

move the Claimant to the Potato Plant on a trial basis. The risks identified by Mr Kennedy were to be managed by applying a number of exemptions to what the Claimant would and could be required to do.

62. Mr Kennedy set out in his statement the restrictions and limitations put in place to facilitate the Claimant's return to work in the Potato Plant, to which she agreed, as follows (at Paragraph 29):

62.1. The Claimant must wear gloves and was able to double up on gloves if she wished to, provided she wore latex gloves over these.

62.2. The Claimant was not to lift more than 5kg in weight.

62.3. The Claimant was to remain on the line in a grade two capacity (which was the same grade as her role in Dolly Up);

62.4. The Claimant was not permitted to work on gantries (i.e., raised platforms) due to her dizziness;

62.5. The Claimant would attend a further OH review in four weeks time;

62.6. The Claimant was to attend weekly reviews with her manager and a member of the HR Team, to see how she was getting on;

62.7. The Claimant was to have a phased return of 50% of hours for four weeks, in line with the medical advice.

63. The Claimant returned to work on 23 May 2025, in the Potato Plant and subject to the above restrictions,

64. On 28 May 2025, ACAS Early Conciliation concluded and the Claimant was issued with an Early Conciliation Certificate. She presented her claim to the Tribunal on 24 June 2025.

65. The Claimant's grievance of 7 April 2025 was not upheld. So far as relevant, the following findings were made (at [241] – [243] of the Bundle):

> …
>
> 2) You raised concern about being placed on suspension and stated that you were told you could move to the Potato Plant but were not given the opportunity to do so.
>
> Following a thorough investigation, it was confirmed that although there were discussions about transferring you to the Potato Plant — and positions were available at the time — new information regarding your medical condition was brought to light. Specifically, you informed your manager Lisa Lewis that your heart could stop due to exposure to the cold environment. Given the seriousness of this concern, the decision was made to pause the transfer to ensure your health and safety while further investigations and risk assessments were completed. During this period, you were placed on paid

suspension, as the Company felt this was a fair and supportive approach while your case was reviewed.

While we acknowledge that discussions took place regarding a potential move, based on the information available at the time, it was both appropriate and necessary to temporarily pause the transfer in order to prioritise your health and safety.

As such this part of your grievance is not upheld.

3) You raised a concern that you were consistently assigned to Lines 3 and 4, which you feel are colder than the other lines.

Following a thorough investigation, it was confirmed that when you first started, you may have been assigned to Lines 3 and 4. As you had not disclosed your medical condition at that time, management was unaware that these lines were unsuitable for you. After you raised concerns about your condition, you were referred to Occupational Health, and based on their advice, you were moved to your preferred lines — the box meal and POD lines. It was also confirmed that when your partner, Petru Ghiarasim, moved to the colder lines, you requested to be placed there as well. However, this request was declined to protect your safety and wellbeing. Management has shown clear awareness of your medical condition and has taken appropriate steps to support you.

Based on the information available at the time and actions taken to safeguard your health, this part of your grievance is not upheld.

66. The Claimant appealed against the grievance decision but following an appeal hearing on 26 June 2025, her appeal was not successful (per the appeal outcome letter of 4 July 2025). So far as relevant to the issues in this case, the appeal outcome included the following (at [285] of the Bundle):

> Placement on cold lines despite Raynaud's condition:
>
> You raised concerns that you continued to be placed on cold lines despite informing management of your Raynaud's condition. During the appeal meeting, it was explained that when the company became aware of your condition, appropriate steps were taken, including consultation with Occupational Health and a move to warmer areas. The decision was made based on the available evidence, including witness statements and internal investigations, which found no confirmation that you were knowingly placed on colder lines after your condition was disclosed.

Analysis & conclusions

67. I considered and determined the complaints per the agreed List of Issues (at [51] – [53] of the Bundle), save that I address the issue of time limits last.

Direct discrimination on grounds of sex

Less favourable treatment

68. The allegation of less favourable treatment was as follows:

    68.1. Denying the Claimant the chance to work in a warmer environment

69. The Claimant compared her treatment to that of Mr Ghiarasim, who moved to the Potato Plant in or around March 2025. The Claimant did not move there until 23/5/25 and alleges that this less favourable treatment was because she is a woman.

70. Given my findings, it was not, in my judgment, correct to say that the Respondent denied the Claimant the chance to work in a warmer environment. In November 2024, when the Claimant first raised issues with the cold working environment and her health, the Respondent moved her by agreement from working with frozen and chilled products to working only with chilled products (in the Pod). That was a relatively warmer working environment within Dolly Up and was a direct response to the issues being raised by the Claimant about working in cold conditions.

71. The Claimant alleged that she was denied the chance to work in a warmer environment as a result of her medical suspension, which took effect from 6 February 2025. However, and as found, it was entirely correct, proper and reasonable for the Respondent to suspend the Claimant in circumstances where she shared with the Respondent medical advice that her heart might stop in cold environments. To not remove the Claimant from that environment and that risk would have been reckless and dangerous. The Respondent cannot be criticised in any respect for the actions it quite rightly took on 6 February 2025. To characterise that decision and those actions as denying the Claimant the opportunity to work in a warmer environment is misplaced, misconceived and ignores the reality of what the Claimant was telling the Respondent at the time.

72. Thereafter, the Respondent did everything reasonably possible to support and assist the Claimant back into the workplace, by exploring both her medical needs and a range of options within its site where she could safely work. As a result of those endeavours, and upon receiving new information regarding the Claimant's health conditions, a workable, safe compromise was found, which enabled the Claimant to rejoin the workforce in the Potato Plant from 23 May 2025.

73. For all those reasons, the alleged treatment relied upon by the Claimant is not made out. She was never denied the opportunity to work in a warmer environment. On that basis alone, the complaint of direct discrimination on grounds of sex is similarly not made out.

Reason why & comparators

74. However, even if the Claimant were correct and she had been denied the opportunity to work in a warmer environment, there was no evidence

whatsoever from which it could be inferred that her sex had anything to do with how she was treated. That conclusion is clear, whether she compares her treatment with Mr Ghiarasim or with a hypothetical comparator.

75. Her comparison with Mr Ghiarasim is, in any event, misplaced. His circumstances were materially different from the Claimant's. He had arthritis, not Reynald's Syndrome. He was not subject to restrictions on what he could lift nor was he at risk of dizziness, which could adversely affect his ability work at height. He was not being advised by his GP or A&E that working in a cold environment could have serious consequences for his heart. He eventually moved via the recruitment process, not by way of a reasonable adjustment or medical transfer.

76. In addition, Mr Ghiarasim was, in any event, treated the same as the Claimant was allegedly treated, in that he was denied the opportunity to move to the Potato Plant on a number of occasions (he reported on 6 February 2025 having made three applications to the recruitment team to transfer, all of which were unsuccessful).

77. Other than the fact that Mr Ghiarasim moved to the Potato Plant a couple of months before her, the Claimant has been unable to point to anything she relies upon to support her contention that the supposed differential treatment was because of her sex. In reality, the differences in circumstances between the Claimant and Mr Ghiarasim were stark and clearly explained why their respective relocations to the Potato Plant occurred when they did. What was clear and obvious was that their genders were utterly irrelevant to the way in which they were managed by the Respondent.

78. For those reasons, even if the Claimant had been denied the opportunity to move to a warmer working environment, it was not because of her sex.

Conclusion; direct discrimination by reason of sex

79. In conclusion, the Claimant was not treated less favourably because she is a woman, the complaint of direct discrimination on grounds of sex is not made out and it is dismissed.

Breach of the duty to make reasonable adjustments

80. As I have found, the Respondent was first made aware that the Claimant had Reynaud's Syndrome in December 2024. As the Claimant's disability arose by reason of her Reynaud's Syndrome, the Respondent cannot be considered to have had knowledge that she was disabled before December 2024. That also means that any duty to make reasonable adjustments by reason of the Claimant's disability cannot have arisen before December 2024.

The duty to make reasonable adjustments

81. The Claimant relies upon the following PCP:

    81.1. The requirement to work in environments below 12 degrees and to handle cold products

82. In his written submissions, Mr Bronze conceded that the Respondent did operate such a PCP, since, as recorded above, the purpose of the Respondent's business was the production of chilled and frozen meals. It was also conceded that the PCP put the Claimant at a substantial disadvantage because of her disability, for the period contended for by the Claimant in the List of Issues, namely from 13 December 2024 to 23 May 2025. It was also conceded that the Respondent knew or ought reasonably to have known that the PCP would place the Claimant at a substantial disadvantage because of her disability.

83. In other words, the Respondent accepted that between 13 December 2024 and 23 May 2025, it was under a duty to make reasonable adjustments to the PCP, the aim and purpose of which must be to avoid or reduce the substantial disadvantage caused to the Claimant by the PCP because of her Reynaud's Syndrome.

84. At the same time, by the Claimant's own case (as clarified, confirmed and reflected in the List of Issues), it was right to say that the duty to make reasonable adjustments either did not arise or, if it did, was being met by the Respondent, before 13 December 2024 and after 23 May 2025.

85. My first observation is that this was an employer with a track record of responding to issues raised by the Claimant about her health and which proactively tried to address those issues. That can be seen from its responses in October 2024 (when the Claimant reported dizziness and back pain), November 2024 (when the Claimant reported issues with working in the cold), on 6 February 2025 (when the Claimant reported risks to her heart from working in the cold) and, thereafter, in the investigations and assessments the Respondent undertook that enabled it to relocate the Claimant to the Potato Plant, the warmest part of its operation, with appropriate measures in place.

86. So far as the period under consideration is concerned, this can be split in two: 13 December 2024 to 6 February 2025; and 6 February 2025 to 23 May 2025.

<u>13 December 2024 – 6 February 2025</u>

87. Prior to 13 December 2024, the Claimant had raised issues in November 2024 about the impact of the cold on her health (see, in particular, the Claimant's grievance meeting with Mr Rose on 19 November 2024). That resulted in the Respondent moving the Claimant to the Pod, an area which the Claimant told the Respondent she was "ok to work in". As noted above,

the Pod involved handling chilled, rather than frozen products and was warmer that the lines the Claimant had previously been working on.

88. As noted above, the Claimant made a formal request to moved to a warmer environment on 19 December 2024, following her diagnosis of Reynaud's Syndrome. Unfortunately, that request was sent to Ms Morris at a time when she was absent from the business. It appeared that, as a result, the Claimant's request was not considered until it was forwarded by Ms Morris to Ms Sen on or around 24 January 2025. OH reported on 29 January 2025 and thereafter, a welfare meeting with the Claimant was arranged for 6 February 2025.

89. It follows that from 13 December 2024, the Respondent had made adjustments to the Claimant's working conditions, in response to the issues she had raised about the impact of the cold on her health (by moving her, by agreement, to the Pod). On the basis of the medical evidence provided to the Respondent at that time, that adjustment was reasonable, as it addressed the issue the Claimant had with handling frozen goods.

90. What then of the period from 19 December 2024 (when the Claimant asked to move to a warmer environment than the Pod) and 6 February 2025? It was not suggested that, following the Claimant's request of 19 December 2024 and before the welfare meeting on 6 February 2025, there were any further adjustments to the Claimant's working environment.

91. A failure to address or deal with a request for an adjustment is not, in and of itself, a breach of the duty to make reasonable adjustments. The test is whether, viewed objectively, there were adjustments which could or should have been reasonably made, not whether the employer acted reasonably or unreasonably in dealing with a request for adjustments (per Ministry of Defence v Cummins UKEAT/0240/14/DA; Tarbuck v Sainsbury's Supermarkets Ltd UKEAT/0136/06).

92. In my judgment, it cannot be said, viewed objectively, that between 19 December 2024 and 29 January 2025, there were further adjustments which the Respondent was under a duty to make, over and above moving the Claimant to the Pod, and based upon the medical evidence it had at that time. That changed with receipt of the OH report of 29 January 2025, wherein OH recommended moving the Claimant to a warmer environment than she was currently working in. That was then followed by a fit note from the Claimant's GP, dated 5 February 2025, which also recommended a move to a warmer environment.

93. Thereafter, the Respondent convened the welfare meeting with the Claimant on 6 February 2025.

94. In my judgment, the Respondent acted promptly upon receipt of the advice from OH and the Claimant's GP. It was not until receipt of the

advice from the medical professionals that the duty was further triggered, since it was not until then that the Respondent could have reasonably and objectively known that working in the Pod was placing the Claimant at substantial disadvantage because of her disability. The Respondent was unable to take reasonable steps to avoid the disadvantage prior to receipt of the medical advice because it could not reasonably have known until then that the Claimant was placed at further substantial disadvantage. In that regard, it was reasonable, proper and lawful for the Respondent to await the OH advice (which was then reaffirmed by the Claimant's GP), before considering further adjustments.

95. In other words, there was no breach of the duty to make reasonable adjustments in the period from 19 December 2024 (when the Claimant asked to move to a warmer environment) and 6 February 2025 (when the Respondent conducted its welfare meeting with the Claimant).

6 February 2025 – 23 May 2025

96. As seen, one of the consequences of the meeting on 6 February 2025 was that the Claimant was suspended from work on medical grounds. That had an important legal consequence. The Respondent was no longer under a duty to make reasonable adjustments because, whilst she was absent from work (whether by reason of medical suspension or sick leave), the Claimant was not subject to the PCP, and not therefore placed at any substantial disadvantage.

97. For reasons I have explained, it was quite proper and appropriate for the Respondent to medically suspend the Claimant when it did, in light of the information being provided by the Claimant about her heart. When that information changed, the Respondent moved the Claimant onto sick leave, because it was being told by OH that she was not fit for work in any capacity.

98. What the Respondent did during the Claimant's absence from work was noteworthy. It went out of its way to explore the appropriate avenues to facilitate her safe return to work, both medical and practical. As shown, that positive practical approach ultimately reaped rewards, with the Claimant being able to return to work in the Potato Plant, with adjustments in place which were appropriate and effective, and which successfully addressed the issues she faced because of her Reynaud's Syndrome and her other health conditions.

Proposed adjustments

99. The List of Issues recorded two steps the Claimant says the Respondent could have done to avoid the disadvantage she faced by reason of the PCP, namely:

    99.1. Allowing her to work in a warmer environment or different part of the premises; and

99.2. Allowing her not to handle frozen products

100. In light of my findings and analysis, the Respondent did allow the Claimant to work in a warmer environment (in November 2024, when it moved her to the Pod, and again in May 2025 when it moved her to the Potato Plant) and did allow her not to handle frozen foods (again, when it moved her to the Pod in November 2024 and to the Potato Plant in May 2025). Although not conclusive of the issue, it was instructive and revealing that the very adjustments the Claimant believed the Respondent should have implemented, were implemented by the Respondent.

Conclusions: reasonable adjustments

101. I am reminded of the nature of the Respondent's business, namely chilled and frozen meals. By definition, its working environment is cold. Despite that, the Respondent was able, by way of the endeavour of Mr Kennedy, Ms Lewis, Ms Sen, Mr Morgan and its OH team, to enable the Claimant to return to work in a safe and healthy manner, and in circumstances which do not pose a risk to her health conditions in general, and her Reynaud's Syndrome in particular.

102. Drawing all that together, I concluded that when the Respondent was under to a duty to make reasonable adjustments, it met that duty. In other words, there was no breach of the duty on the Respondent to make reasonable adjustments, the complaint is not made out and it is dismissed.

Time limits

103. As detailed in the List of Issues (Paragraphs 1.1, at [51] of the Bundle), anything that arose before 17 January 2025 was potentially out of time (given the dates of ACAS Early Conciliation and the date on which the Claimant presented her claim to the Tribunal).

104. However, I found all the complaints I had to determined were presented in time:

104.1. The complaint of direct discrimination on grounds of sex was in time because the allegation effectively arose either in March 2025 (when Mr Ghiarasim moved to the Potato Plant) or on 23 May 2025, when the Claimant did. Either way, the complaint as pleaded was presented in time;

104.2. The complaint of breach of the duty to make reasonable adjustments was in time, because although the period it was alleged the duty arose began on 13 December 2024, it continued, on the Claimant's case, until 23 May 2025 and was presented as a continuing act of discrimination (in that it was contended that the Respondent had been in breach of the duty throughout that period). On that basis, as the end of the alleged continuing act fell in time

(in that that it was after 17 January 2025), the whole period was brought in time.

105. For those reasons, the Tribunal had jurisdiction to determine all the issues before me. For the reasons I have given, all the complaints were dismissed on their merits.

Order posted to the parties on
07 May 2026

Kacey O'Brien
For Secretary of the Tribunals

Approved by:

EMPLOYMENT JUDGE S POVEY
Dated: 7 May 2026

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