EMPLOYMENT TRIBUNALS

Claimant: Miss Charlie McKechan

Respondent: Swissport GB Limited

Heard at: by CVP from the Bristol Magistrates Court

On: **18, 19 (with the parties) and 20 (in chambers) May 2026**

Before: Employment Judge Woodhead (sitting alone)

Appearances

For the Claimant: Representing herself

For the Respondent: Mr Kashif Ali (Counsel) with Ms D Sabo (HRBP)

RESERVED JUDGMENT WITH REASONS

1. The complaint of unfavourable treatment because of something arising in consequence of disability is not well-founded and is dismissed.

2. The complaints of failure to make reasonable adjustments for disability are not well-founded and are dismissed.

3. The complaint of harassment related to disability is not well-founded and is dismissed.

REASONS

THE ISSUES

4. This issues in this Claim were agreed at a preliminary hearing for case management conducted by Employment Judge Rayner on 30 September 2025 and they are set out in the appendix to this judgment.

5. We discussed the issue at the start of the hearing and the Respondent confirmed:

5.1 The justification defence as set out in its amended grounds of resistance (see the Appendix). I note here that this was not covered by the Respondent's written witness statements.

5.2 That the only absences relied upon by the Respondent in the dismissal of the Claimant were those on Sunday to Tuesday 6, 7 and 8 October 2024– [HB127-129]. It was not in dispute that these were not disability related absences because the Claimant was off sick with bronchitis and the side effects of antibiotic treatment.

5.3 That as regards the reasonable adjustments complaints:

5.3.1 It accepted that it applied the PCP's;

5.3.2 The Respondent denied that it required staff to stand at kiosks rather than being seated. It said it is usual practice for staff to stand, as it difficult to greet passengers and check their passports and boarding cards whilst seated, but it is not a formal requirement.

5.3.3 It accepted that the adjustments contended for could have been implemented (this is not consistent with the amended grounds of resistance (see for example 43.1));

5.3.4 It did not accept that the PCP's/physical features put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability;

5.3.5 It did not accept that it knew of any such disadvantage suffered by the Claimant.

6. It was clear that preparation for this hearing had been acrimonious and difficult between the parties. The Claimant suggested at the outset of the hearing that she had applied to amend her claim but she was not clear on the details. I was referred to correspondence and considered it during a break.

7. During the break I found employment tribunal correspondence that I had been referred to as follows:

> "*Date 6 February 2026*
>
> *Case Number: 6022153/2024*
>
> *Claimant Respondent*
>
> *C Mckechan V Swissport GB limited*
>
> *Dear Parties*
>
> *This Claim has been put before EJ Woodhead on 17 November 2025*

and he has asked me to write as follows:

> *As regards the Claimant's correspondence of 27 October 2025 and 11 November 2025 and the Respondent's correspondence of 11 November 2025, the parties are to note their duties to cooperate with each other pursuant to Rule 3.*
>
> *If, having made reasonable efforts to resolve their differences, the parties are not able to find a resolution then they are to write to the Tribunal to explain the resolution that they seek of the Tribunal (including how the dispute should be resolved bearing in mind that the Tribunal has limited resources to determine applications*
>
> > *(i) on the papers or at*
> >
> > *(ii) preliminary hearings).*
>
> *The parties are encouraged to speak on the phone. The Parties must give active thought to how additional witnesses will affect the hearing timetable and must bear in mind that additional reading time needed by the Tribunal will most likely be taken from the time available to the parties for cross examination and submissions.*

Further correspondence received on the 25 November 2025 has been referred to Employment Judge Rayner who directs me to write as follows:

> *At the Case management hearing the claimant clarified her claims and the respondent representative made no objections to the list of issues and did not request the claimant to make any formal application to amend.*
>
> *The list of issues was agreed as reflecting and clarifying the claims. It was agreed that the respondent was given leave to amend the response. The terms of that amendment are set out at paragraph 15, which states, The Respondent is permitted to serve an amended response, so as to arrive with the Tribunal and the Claimant on or before 4:00 pm 11 November 2025, if so advised.*
>
> *The amended response will set out the Respondent's factual assertions in connection with the claim as understood as a result of the discussions at this Hearing, and paragraph 8 of the case summary, which states 8. The Respondent admits disability and knowledge of disability but denies that it discriminated against the claimant. The respondent has been given leave to file an amended response following clarification of the claimant's claims at this hearing.*
>
> *In the amended claim the respondent will set out in particular*

whether it admits any of the PCPs relied upon by the claimant whether it admits the things the claimant says arrives from her disability and any legitimate aim relied upon it, in respect of the section 15 claim, of discrimination for a reason arising from disability.

In these circumstances, the respondent's response appears to be a full response to the claimants made and clarified at the Case management hearing, and in line with the overriding objective. Both parties are now aware of the claims and responses they must deal with. No further orders are made in respect of the amended grounds.

The remaining case management directions are all extended by 14 days (CMO para 31 - 9th February / para 32 - 23rd February /para 42 - 30th March).

This will not affect or delay the hearing."

and then:

"*Subject: 6022153/2024 McKechan v Swissport GB Ltd*

Sent: 31/03/2026, 09:22:03

Dear Parties,

"Employment Judge Self has considered the huge amount of correspondence since mid-February and observes as follows:

a) This is a relatively straightforward claim for disability discrimination for which the issues have been clearly defined.

b) The parties have been given very straightforward directions that they are to comply with so as to enable the 18-20 May dates to be effective.

c) The parties must co-operate so as to ensure that by 20 April they can write to the Tribunal to confirm that all directions have been complied with and the matter is ready for a hearing.

d) If that is not the case it is highly likely the case will be withdrawn from the list and will not then be heard until the middle of 2027.

e) If either party considers that the other party's conduct has been so egregious that their case should be struck out then they can make that application on the first day of the hearing. If dealing with that application takes too long and it is decided that the case will *not finish in the time allowed, then the consequences are likely to be as set out at d) above.*

f) The parties should work at resolving any differences and ensuring the hearing can go ahead in May.

The Tribunal is not expecting, nor will it reply to any response to this communication. The parties have been told what to do and warned what will happen if they do not comply."

8. I confirmed to the parties that:

   8.1 The 6 February 2026 correspondence appeared to constitute instructions which I had asked be sent out and other instructions from Employment Judge Rayner. The delay in that correspondence being sent to the parties is reflective of the strain on the administrative resources of the Tribunal.

   8.2 it did not appear to me that there was any extant application to amend.

9. The Claimant, appreciating the implications for the hearing of her claim, did not seek to pursue an amendment application and chose to focus on the claim that she did have and which was recorded in the list of issues.

10. Having read the Respondent's witness statements and the amended grounds of resistance [HB53], I considered that there was considerable ambiguity in the Respondent's defence and raised those points with Mr Ali who conceded on behalf of the Respondent that the Respondent had not made its position sufficiently clear. Taking into account that the Respondent, certainly since the amended grounds of resistance was submitted, has had the benefit of solicitor representation, this is not good conduct of the litigation (particularly where there is a litigant in person). In this regard the Respondent also confirmed:

    10.1 Mr Jowett correct his witness statement to read as follows: "*9.3 Despite the business discounting a number of absences such as a migraine on 2 June 2024, (111-112) as Charlie said this occurred as a result of her anxiety, ~~Charlie still exceeded the number of absences allowed in accordance with the Absence Management Policy~~*."

    10.2 The occasions of lateness that were in dispute and where the evidence of that lateness could be found;

    10.3 That while Mr Jowett referred to two serious security breaches [BJWS9.1] and then only appeared to refer to one (on 21 June 2024 [BJWS9.4]) the Respondent also relied on an incident on 22 August 2024 in respect of baggage.

11. It was also unclear on Mr Jowett's witness statement what relevance events of 17 August 2024, coupled with the Claimant's absence the following day, had to his decision to dismiss. This was dealt with when Mr Jowett gave evidence. I

explain in more detail the questions that the ambiguities in the Respondent's amended grounds of resistance and Mr Jowett's written evidence raised in my findings of fact.

THE HEARING

12. This claim was listed for a hearing of three days. It had to be heard in the Bristol Magistrates court.

13. At the start of the hearing I was provided with:

    13.1 A bundle of 264 pages [HB[]]

    13.2 A chronology of three pages [C[]]

    13.3 A further document prepared by the Claimant as a supplement to the chronology

    13.4 A Claimant witness statement (112 numbered paragraphs and 15 pages) [CWS[]]

    13.5 A witness statement for **Mr B Jowett** (28 numbered paragraphs and 6 pages) [BJWS[]]. Mr Jowett took the decision to dismiss the Claimant.

    13.6 A witness statement for **Ms J Ferreira Mendes** (36 numbered paragraphs and 6 pages) [JFMWS[]].

14. I had done all the necessary reading before I first saw the parties at around 10am on the first day.

15. The Claimant has a disability (anxiety) and I noted at the outset that she may need occasional additional breaks during the course of the hearing and that she or anyone else who needed a break could ask for one at any time. The Claimant on occasion became upset and we took breaks, taking her lead as to her needs.

16. We discussed the timetable and agreed that the Claimant would give evidence first. This had the advantage of giving the Claimant the opportunity to experience cross examination before she had to cross examine the Respondent's witnesses.

17. When it came to evidence I reminded witnesses under oath that they were not permitted to communicate with others about the case during breaks or adjournments while they were giving evidence under oath. I gave guidance to the Claimant on what she needed to do in cross examination. I had frequently to intervene in Mr Ali's cross examination of the Claimant and in the Claimant's cross examination of the Respondent's witnesses when it became conversational rather than a series of clear questions and answers. I explained on a number of occasions that I needed to be able clearly to capture the question and answer. This is not unusual in Tribunal proceedings.

18. When it came to the Claimant's cross examination of the Respondent's witnesses I sought to level the playing field for her as a litigant in person by pointing out if a question was on something that was not in dispute, by reminding the Claimant of the evidence (e.g. if she said something had been agreed when it had not) and I helped her put questions to witnesses so that she could make most effective use of the time available. The Respondent did not object to this.

19. The Claimant's evidence concluded at the end of the first day. On the second morning we heard Mr Jowett's evidence. We then heard Miss Mendes' evidence. That did not conclude until after 1pm but it was agreed that it was better to take a break for lunch late so that the parties could consider submissions over the lunch break.

20. The Claimant sent in written submissions which I read over the lunch break. The parties returned at 3pm and Mr Ali then confirmed that he had been able to write up written submissions. He sent those submissions in and I and the Claimant took the time to read them with the aim of having brief oral submissions.

21. The parties returned and Mr Ali made brief further submissions. The Claimant became upset in that time and took a break. Whilst she remained upset she said that she was content for me to ask my questions of the Respondent. I therefore asked my questions on the Respondent's submissions and in that time the Claimant recovered. She started to read out a reply but it was then agreed that it would be better for her to send that in. She did so at about 17:15 and Mr Ali confirmed by email that he had nothing else to say in response.

FINDINGS OF FACT

22. Having considered all the evidence, I find the following facts on a balance of probabilities.

23. The parties will note that not all the matters that they told me about are recorded in my findings of fact. That is because I have limited them to points that are relevant to the legal issues.

The witnesses

24. The Claimant is clearly intelligent and she is also articulate. Whilst she became upset on occasion she was able to advocate for herself effectively and forcefully.

25. I found Mr Jowett and Ms Ferreira Mendes to be thoughtful and reliable witnesses who were consistent in their evidence.

Background

26. On 15 April 2024 the Claimant started employment with the Respondent as a Passenger Services Agent. She accepted in evidence that it is a role that carries responsibility as duties include checking airline passengers in, making sure they board their flight and ensuring that timings are met and things runs smoothly.

27. It is not disputed that the Claimant was disabled by reason of anxiety at all material times. The Claimant took medication for her anxiety. This included mirtazapine. A possible side effect of this medication, that is very common (in that it may affect more than 1 in 10 people), is drousiness/sleepiness [HB170-171]. I accept the Claimant's evidence that she had to take this medication just before she went to bed.

28. The Claimant worked a rotating shift pattern which might mean, for example, that she had to start work on some days at 3am and on others at 3pm. Her contract of employment provided (amongst other things) [HB79 and 81]:

> *5. Probationary Period*
>
> *5.1 The first six months of employment shall be a probationary period during which your conduct, performance and suitability for continued employment will be monitored and assessed.*
>
> *5.2 The Company reserves the right to extend the probationary period for a further 3 months until such time as may be required to allow you to demonstrate your suitability for continued employment. During the extended probationary period your performance, conduct and progress in the role will continue to be monitored and assessed.*
>
> *[…]*
>
> *11. Shift Work*
>
> *11.1 The Company is required to provide an uninterrupted service to its airline customers. To achieve this, you must be prepared to work shift patterns with start/finish times which include any reasonable combination of early, late and / or night shifts as required to meet operational needs each day. Rostered days off each week will be consecutive as far as is reasonably practicable, subject to operational needs.*
>
> *11.2 Daily shift hours shall be those notified from time to time and shall be subject to the irregularities of the aviation business. Therefore you will be required to work shifts according to local operational needs; the actual hours and days of attendance shall be flexible, and may include weekends and Public Holidays.*
>
> *11.3 For the purpose of clause 11.1 and 11.2 above shift work excludes employees contracted to work regular midweek hours (Monday to Friday) typically between 07:00 – 18:00.*
>
> *11.4 In accordance with the Working Time Directive you will not be rostered to commence an early shift less than eleven hours after finishing a rostered late shift, unless there is a specific derogation agreed under workplace arrangement negotiated nationally under a collective*

agreement with a recognised trade union.

29. The Respondent's time keeping and attendance policy provides [HB259]:

    6.2 FORMAL STAGE

    Subject to completion of the informal stage the formal process will ordinarily be invoked on the 6th occasion of lateness in any rolling 52-week period, the outcome of which may result in a sanction being issued (in accordance with the Disciplinary Procedure), taking account of any mitigation. Formal action may also include pay deductions for the aggregate lost time involved.

    Employees will have the right to be accompanied at meetings in accordance with the Company Disciplinary Procedure.

    Employees should note that persistent / continued poor timekeeping could ultimately result in dismissal.

30. The Claimant relied upon her knowledge of an unwritten policy that an employee was not late if they were late by six minutes or less for the start of their shift. I accept Mr Jowett's evidence on the balance of probabilities that this is not the case and that the true policy is that lateness of six minutes or less is still treated as a late arrival but it is just not flagged for action by a manager in the Respondent's automated time and attendance monitoring system (which at the time in question was Kronos). Lateness of more than six minutes is brought to a manager's attention.

31. I accept Mr Jowett and Ms Ferreira Mendes' evidence that Kronos was replaced by another system after the Claimant's employment ended (at some point around early 2025) and that data on Kronos can no longer be accessed.

32. On starting her employment the Claimant completed an onboarding health questionnaire [HB95-97]. On that form she responded to a number of questions and told the Respondent (amongst other things) that she:

    32.1 did not have any medical conditions which may affect her ability to do night working. The question on the form mentioned conditions that cause sleeping difficulties as an example and also conditions that require medication to a strict timetable.

    32.2 did suffer from migraine or persistent headaches;

    32.3 was receiving medical treatment at the present time, that she was taking regular medication and that she had a disability covered by the Equality Act 2010 (EqA);

    32.4 did not have a disability affecting standing or walking;

33. In the request for details of medical conditions she said:

> "*I suffer with anxiety, the migraines are a result of this, I take medication, I take mirtazapine and propranolol*."

34. The Claimant's oral evidence was that during her period of employment her anxiety levels were not as severe as at other times. In submissions she said (amongst other things):

> "*The Respondent argues that a low number of disability-related absences proves an absence of substantial disadvantage. This completely misunderstands the nature of anxiety, which is a fluctuating condition. The Claimant loved her job, and because the workplace was so fast-paced, it actively helped distract her and mask her anxiety during those 6 months. A disabled employee can perform exceptionally well for 6 months, yet spend the next 6 weeks physically unable to leave their house. A low absence count in a short 6 months does not prove fabrication or a lack of need for sick leave*."

Occasions of lateness

35. It is not in dispute that the Claimant was late for work on the following occasions:

35.1 2 May 2024 – 8 minutes late for a 12:30pm start [HB99]

35.2 16 May 2024 –8 minutes late for a 2:30am start [HB100]

35.3 24 May 2024– 2 hrs 12 minutes late for a 3am start [HB100]

35.4 26 May 2024 – 8 minutes late for a 2:30am start [HB101]

35.5 6 June 2024 – 8 minutes late for a 10am start [HB101]

35.6 7 June 2024 – 38 minutes late for a 10:30am start [HB101]

35.7 3 July 2024 – 7 minutes late for a 12:30pm start [HB103]

35.8 19 July 2024 – 17 minutes late for a 3:30am start [HB104]

35.9 31 July 2024 – 7 minutes late for a 15:00 start [HB104]

35.10 6 August 2024 – 7 minutes late for a 2:30am start [HB105]

35.11 19 September 2024 – 7 minutes late for a 3am start [HB107]

35.12 30 September 2024 – 7 minutes late for a 11am start [HB108]

35.13 1 October 2024– 42 minutes late for a 12:45pm start [HB108]

35.14 10 October 2024– 10 minutes late for a 12:30pm start [HB109]

36. As regards the 24 May 2024 lateness of 2 hrs 12 minutes, the Claimant's case was captured at [CWS14 and 43] which read as follows:

> "*14. There was a phone call with [SJ] on 24/5 when I had overslept / was late. I explained my difficulties and understood that explanation had been accepted. The Respondent's own timekeeping records also show a "comment added" entry for the relevant attendance log, although the content has not been disclosed.*
>
> *[…]*
>
> *43. When I spoke with [SJ] after oversleeping, I explained what was happening and understood that had been accepted*".

37. The Claimant clarified at that hearing that what she told her supervisor, SJ, was that she was taking mirtazapine for anxiety and that it caused her to be drowsy and not wake up. It appears that the first time SJ was mentioned by the Claimant was in a document she sent to the Tribunal, in November 2025, in rebuttal of the Respondent's amended response. The Claimant said that her conversation with SJ was evidenced by the reference in the Kronos records for this absence which read "*Late IN – Comment Added*" [HB100]. She said that this suggested that SJ had noted on Kronos that the Claimant might be late due to medication she was taking for her disability. I accept the Respondent's evidence that the Kronos record could not be obtained because the Respondent had moved to a new system and Kronos records could not longer be accessed.

38. The Respondent submitted that:

    38.1 the Claimant's witness statement lacked detail on what the Claimant had told SJ and that she had not mentioned telling SJ until November 2025.

    38.2 If the Claimant had told SJ then she would have also informed Mr Jowett that this was the case at the probation meeting (there is no dispute that she did not do so) as there was discussion of absences related to disability at that meeting.

39. It is of course for me to determine whether her oversleeping on that day and her other instances of lateness were in fact because of her anxiety medication and whether her lateness was therefore something arising in consequence of disability. On the balance of probabilities I find that the Claimant did tell SJ, during their call on 24 May 2024, that she had overslept because of the effects of mirtazapine, a medication the Claimant took for her anxiety. The Claimant has consistently attributed her lateness on that occassion to this, SJ was not called as a witness to dispute what the Claimant says she was told and there is evidence of a note having been made on Kronos against this occasion of late attendance which suggests that the Claimant told the Respondent something about why she said she was late. I think it probable that she did blame oversleeping for her lateness (it was a 3am shift) and sought to mitigate the

consequences of her actions by pointing to her medication as the cause.

40. I note here that there is no mention of grogginess in the weeks after the Claimant's dismissal when she did visit her GP [HB147] and the Claimant continued with the same medication.

Sickness and dependant related absence

41. It was also not in dispute that the Claimant had six periods of absence from work on the following occasions:

41.1 Wednesday 24 April 2024 - [HB99] – there were no details of the cause of this absence and no return to work form

41.2 Sunday 2 June 2024 - [HB101, 111- 113] – this was one day's absence which was due to a migraine and it is not in dispute that this was disability related absence. There was a return to work form on which the Claimant wrote under the heading *"Establish with the employee their reasons for this absence and briefly summarise the main points discussed? (Including symptoms of the absence '/ Whether or not the employee visited a GP/Specialist and what the GP/Specialist advised to alleviate the symptoms or condition'/If they are taking any medication and are there any side effects of the medication the Company needs to be made aware of?)*":

> "*migraine / didn't visit GP but have in the past. It is a symptom of anxiety. I take propranolol and mirtazapine*"

The form, which the Claimant completed herself, prompted the Claimant to say if she needed an occupational health referral or reasonable adjustments and she answered "no" [HB112].

The manager did not sign this form

41.3 Sunday 4 August 2024 - [HB104, 117, 119] - this absence was caused by the Claimant's grandmother being ill. On a self certification form the Claimant recorded "*I take mirtazapine – not related to this absence*".

41.4 Saturday 17 and Sunday 18 August 2024 – [HB105, 121]. This was following the alleged incident with Ms Ferreira Mendes which is dealt with in more detail below. This was anxiety related absence and the Claimant sent a WhatsApp message to a manager "Pat" on 18 August 2024 saying:

> "*Morning, I won't be in today, I'm still riddled with anxiety, sorry*."

41.5 Monday 2 September 2024 – [HB106] – In evidence the Claimant said that this absence was for plantar fasciitis following a foot injury sustained at work. The fit note anticipated that the injury would take between 1 September 2024 and 22 September 2024 to heal.

41.6 Monday – Saturday 9 – 14 September 2024 – [HB107, 122-125] this again was absence due to plantar fasciitis following the same foot injury sustained at work. On a return to work form it was noted "*Suffers from anxiety. Just to keep it in mind*". The return to work form was signed by the Claimant and a manager with the surname Dlamini.

41.7 Sunday to Tuesday 6, 7 and 8 October 2024– [HB127-129]. The return to work form noted three days' absence due to Bronchitis and the side effects of antibiotics. The Respondent's case was that these were the only days of absence which it took into account in its decision to terminate the Claimant's employment.

21 June 2024 Late bag incident.

42. On 21 June 2024 a manager (SN) had a formal conversation with the Claimant which was noted in a "Record of Conversation" [HB200] which read:

> "***Details:*** *OTP flight CP'd @ 0510 and reopened again at 0528 to check in a late bag. Agent called undercroft for approval which they gave. Agent in question also asked another agent what to do.*
>
> ***Manager's comments****: Once a flight is CP'd under not circumstances can a Ryanair flight be reopened.*
>
> ***Staff member's comments****: learnt by mistake, won't happen again*
>
> ***Action to be taken:*** *Agent is very hard working and is so sorry this has happened. General memo put out by ATM.*"

43. I accept Mr Jowett's oral evidence as follows:

43.1 The Claimant was working on the check in desks and the status of the flight in question was Closed Pending (CP'd) (there is no need to go into the distinction here between Closed and Closed Pending). This status meant that further passenger luggage could not be checked in.

43.2 The Claimant should have called a supervisor within the Respondent's own business for guidance on what to do because she did not have an appreciation of the Respondent's responsibilities to its client (the airline) or the airline's priorities. The Respondent could be fined if it caused a flight to be late.

43.3 Rather than calling a supervisor the Claimant called a team dealing with luggage in the undercroft who said she could send the luggage down it.

43.4 A general memo was put out so that the other 110 or so team members could learn from the Claimant's mistake.

43.5 This was not treated as misconduct worthy of disciplinary action.

44. For completeness I note here that on 12 July 2024 the Respondent sent the

Claimant a letter emphasising the need to clock in and out of business/record working hours correctly [HB115-116]. Nothing turns on this and it was not referred to in evidence.

17 August 2024 - Incident between Claimant and Team Leader Ms Ferreira Mendes

45. On 17 August 2024 the Claimant was seated at a check in desk with a colleague called Trinay. Passengers were not actively checking in – they were queuing stood back from the check in desks. Ms Ferreira Mendes approached check in because the team leader responsible for the airline was on her break.

46. Ms Ferreira Mendes saw that the Claimant was not wearing her hair up and so was not complying with the Respondent's dress code. The Claimant alleged that Ms Ferreira Mendes threw her own hair clip at the Claimant when telling the Claimant to put her hair up. Ms Ferreira Mendes disputed the allegation. Her evidence was that she passed a hair band to the Claimant and asked her to put her hair up. I accept her evidence that the Respondent does not have hair clips but provides elasticated hair bands. This does not of course mean that Ms Ferreira Mendes was not wearing a hair clip. An airline representative was at the check in at the time.

47. The Claimant pointed to a text message she said she exchanged with a colleague called Catherine around a September / October 2025 which read [HB240]:

> "***C to Catherine****: Hey cat hope you're okay, im going to be calling you as a witness, hopefully voluntarily for a court case I have ongoing with swissport, can you let me know if you'll be happy to do this? Xx*
>
> ***Catherine to C****: Hi lovely I no longer work at the airport, but if I can help in anyway of course I'd be happy to xx*
>
> ***C to Catherine****: Doesn't matter that you don't work there, do you remember that day I was on check in and Julie came storming over and threw her clip at me? And was trying to force me onto kiosks even though I was dizzy and then called pat in front of everyone saying I needed to go*
>
> ***Catherine to C****: Yes I do remember her doing the hair clip thing but I didn't realise she was trying to force you onto the kiosks when you wasn't well... how awful*"

48. Ms Ferreira Mendes asked the Claimant to get up from her seated position and to go to help customers who were using the self-check in kiosks.

49. There was a dispute about what the Claimant then said. The Claimant said that she told Ms Ferreira Mendes that she was feeling dizzy and asked if her colleague Trinay could move instead. Ms Ferreira Mendes' account is that the

Claimant said to her: "*I'm going to faint! I can't do the floor!*". The Claimant's oral evidence was that she would not use the word 'faint' and that had she meant or said that she would have said that she was going to '*pass out*'.

50. I accept that Ms Ferreira Mendes was concerned about the Claimant saying she was feeling unwell in front of an airline representative (staffing the check in desk being a position of responsibility). Ms Ferreira Mendes therefore picked up the check in desk phone and called the Claimant's supervisor (Pat) to tell her that as the Claimant had told her she was feeling unwell she needed to tell the Claimant to go home. I do not consider that in doing so Ms Ferreira Mendes disclosed confidential information in front of third parties or customers. Ms Ferreira Mendes was relaying to Pat what the Claimant had herself said and Ms Ferreira Mendes' own decision in light of what the Claimant had said. The Claimant then told Ms Ferreira Mendes that she did not need to go home, she just needed to remain seated until she felt better. The Claimant asked for a private conversation with Ms Ferreira Mendes which took place in an area away from check-in.

51. The Claimant's account of what was said in that meeting and what happened immediately after was summarised in her witness statement as follows:

> "*28. I tried to explain that dizziness was a symptom linked to anxiety and that I could manage it. I began to say that I suffered with anxiety.*
>
> *29. Julie scoffed, rolled her eyes, and said, "everyone suffers with anxiety."*
>
> *30. I tried to explain that it was a medical condition and that the company had a duty to make reasonable adjustments. Julie shut me down and refused to listen.*
>
> *31. As a result, I became extremely distressed and had a panic attack. I sat on the stairs when this happened.*
>
> *32. I asked Julie to get my belongings from the desk because I did not want anyone seeing me in that state. She did.*
>
> *33. I then went to the office area to collect my belongings. In the corridor I could hear Pat speaking loudly on the phone about me and what had happened. Whether intentional or not, I found that humiliating.*
>
> *34. I spoke to Pat and explained what had happened. I asked her to get my things from the staff room because I was too embarrassed for anyone to see how upset I was.*"

52. That same afternoon the Claimant sent a message to Pat (together with photos of medical documents) which read as follows [HB203-209]:

> *Hi pat, sorry to bother you I know you're busy but Nobody should be*

made to feel the way Julie made me feel through no fault of my own, I told her I suffer with bad anxiety only for her to scoff at me and say everyone does, I told her that's not true at all and she was having a go saying I'm judging her with that statement, I have no idea what she meant by that. I don't just feel anxious sometimes, my anxiety is a protected characteristic under the equality act, just like any physical disability and any pregnancy, because I've suffered with it for a long time(more than a year) and it effects my daily life. I almost crashed a couple of times because I was in such a mess driving home, ive worked in management before and im actually shocked that anyone in a leadership role is so uneducated in this area, i had to go through a lot of training in areas such as these and how to manage people effectively, can I get the v grievance process please, im not looking to get anvbodv into trouble i just don't want anybody else having to go through what I did today, im not even sure I can come back which I don't want because im one of very few people who actually love my job, its actually helped me a lot with my anxiety but today i feel like ive taken 10 steps back. Im going to send you evidence that it is a tea condition

53. The following day the Claimant told Pat via message that she remained unwell. This is recorded above.

54. Ms Ferreira Mendes' account in her witness statement was that at the time she was heavily pregnant and that she could not catch the Claimant if she did faint she also summarised:

> *15. […] Charlie said she wasn't feeling well and was undergoing health tests.*
>
> *16 I responded with empathy and tried to explain that Charlie was putting herself at risk regardless of whether she was working on the check-in desk or on the floor. I explained it would be safer for Charlie to go home given the information she had provided, particularly the fact that she had said she was going to faint.*
>
> *17 When Charlie realised, I was not going to change my mind, her demeanour changed and she became more hostile. It was then she started to go into detail regarding her high level of anxiety and personal issue. She also told me what she believed the company should be doing to support her. She said the company should assist her if she had a high level of anxiety that day, for example if there was a certain task she didn't wish to do, she felt she should be accommodated.*
>
> *18 I am fully aware how challenging anxiety and mental health issues can be, having managed other employees in similar situations and continued to approach the situation with empathy. I explained to Charlie that people do have anxiety and we had other members of staff with anxiety of different levels and varying triggers and she would not be the teams first or last*

member of staff with this issue. I stated that employees were always encouraged to mention to HR and management this kind of issue so they could assist in a manner without impact on the daily operations.

19 At this point the matter had escalated, and Charlie was crying and shouting about the obligations the company has towards mental health and staff. I felt that Charlie was no longer behaving rationally and everything I said to her she took out of context and she started to insult me, telling me I was talking nonsense and rubbish and not everyone has anxiety.

20 She then began to verbally threaten me, saying I was discriminating against her on the grounds of mental health.

21 I recall Charlie saying she could take Swissport to Court and that she could make me lose my job as I had not followed the procedure.

22 I began to feel very uncomfortable, I was 30 weeks pregnant, but Charlie had no regard in the way she was threatening me both as a Team Leader, a colleague and person who was heavily pregnant.

55. 17 August 2024 was a Saturday and on the following Monday, 19 August 2024, Ms Ferreira Mendes (for whom English is not her first language) sent the following email to Mr Jowett and an employee called TG (who was a line manager) [HB211-213]:

"Subject: Agent Charlie Mckechan

Good Morning Ben

I just would like to make a report/statement about the Agent Charlie Mckechan and the situation I had to deal with Saturday the 17th of August early afternoon on the TUI check-in.

I have been called by the agents allocated for that specific check-in because the TL responsible for the airline was on her break. According to the agents they didn't have enough staff, and the Tui Representatives would like to open the check-in early.

When I approach the check-in area I observed that we had 4 agents but 2 at the check-in desk and 2 on the floor.

I noticed that the Agent Charlie wasn't complying with the uniform and presentation standards.

Straight away I asked her to make sure her hair was up and to come on the floor to assist her colleagues.

The Agent response was : 'I'm going to faint! I can't do the floor!.'

This sentence has been said in front of the Airline Representatives. As a Team Leader I had to make sure the operation is running correctly and make sure the staff are safe. The minute she said 'I'm going to faint' I, without any hesitation, kindly asked her to go home. As a leader representing the Company on the ground I know the risks of this situation can escalate to serious matter.

The agent wasn't expecting my firm and straight forward answer. She tried to justifying she would be okay at the desk but because the Airline Representatives were around observing the situation I, again, mentioned to the agent if she wasn't feeling well and about to faint she needed to go home for her safety.

Charlie requested to have a private word with me. I was opened to listen and explain the reasons why it would be better for her to go home. We removed ourselves from the check-in area and the conversation started.

The agent mentioned again she wasn't feeling well. She was going through health tests. I wanted to approach the situation with empathy and fairness for both sides. I again, tried to explain without success she was putting herself at risk regardless if she was on check-in desk or on the floor. It would be safe for both parts if she went home as she was saying she would faint.

The conversation took a different turn. The agent realised I wasn't changing my mind so she starting to tell me she has a very high level of anxiety and went to describe her personal issue. She gave me a full brief what the company suppose to do to support her.

I understand that mental health can be a challenging issue, and I was trying to approach this situation with empathy. However, the behavior I witnessed after that was unacceptable and impacted my ability to communicate with the agent. As a TL, it was clear to me I had to be careful with the words I used because I knew it she would used against me or the company.

Unfortunately, for that specific situation she made very clear she would faint, she potentially was creating a harm for herself. As Team leader if anything happen to her I would loose my job. The company would have a massive healthy and safety issues. To the Airline Representatives I would have to justifying why the unwell agent remain on check-in/floor.

I told her we have other member staff with anxiety of course with different levels and triggers. She wouldn't be our first or last member of staff with this matter. As a company we always encourage our staff to mentioned to HR and Management this kind of issue so we can assist everyone in a better manner without any impact in our daily basis operations.

As a member of staff she has to follow some contract rules too. Inform the supervisor/ team leader or senior if she wasn't very well before she start her shift. If she has any medical conditions, she has to inform the HR or Management so they will be able to assist her and minimising any impact for both sides.

At this point she was crying and shouting all the obligation the company has towards with mental health staff members. Everything I mention above she took out of context and start to insult me. Saying I was talking non sense. I was talking rubbish. Not everyone has anxiety. She was verbally threatening me saying I was discriminating her on the mental health grounds.

Like I mentioned above, I stopped to talk as the agent couldn't understand why she needs to go home and the reasons why. She turned the all conversation into her Mental Health issue. Demanding to do only a specific task. Demanding specific actions from the company that only benefits her. No concerns about her action towards the company and staff members. Not caring about her uniform standard and presentation. She wasn't able to realised her statement ***'I'm going to fain****t!...' was the issue.*

This behavior made me feel very uncomfortable as I'm 30 weeks pregnant. If she had no concerns to threatening me as TL and as a person in this condition I'm worried about her colleagues. Her behavior and verbal words to twist the situation can be very manipulative.

She didn't inform the supervisor on shift she wasn't very well.

She didn't comply with the uniform standard having her hair down.

She was demanding to do an specific task.

She state in front of a Team Leader, Airline Representatives, Colleagues and Passengers she is ***going to faint****.*

She never mentioned to the company about her Mental Heath struggles.

I would like to express my wishes to avoid any kind of 1 to 1 conversation with the Agent. I will suggest a plan when she formally inform the company about her health. I've tried my best as a TL to keep my actions formal and impartial towards our staff members trying to avoid any kind of privilege base on their demands or medical conditions.

Thank you

Julie"

Did Ms Ferreira Mendes throw her hair clip and say "everyone has anxiety" and did the Claimant say she was feeling dizzy or that she was going to faint?

56. I find that:

    56.1 Ms Ferreira Mendes did not throw her hair clip at the Claimant. It is more probable that she quite sternly or curtly told her that she must put her hair up and passed her a hair band;

    56.2 Ms Ferreira Mendes did not say everyone has anxiety (I find that she said words to the effect of '*lots of people have anxiety and Swissport has other members of staff with anxiety of different levels and varying triggers and you would not be the team's first or last member of staff with this issue'*); and

    56.3 The Claimant told Ms Ferreira Mendes that she was going to faint (not that she was dizzy);

    56.4 I find the account of Ms Ferreira Mendes, as set out in her detailed email of two days later, more probable.

57. I reach these findings for the following reasons:

    57.1 The Claimant was feeling anxious that day. On her own account that affected her breathing and made her feel at least 'dizzy'.

    57.2 The Claimant was clearly angry about Ms Ferreira Mendes' decision to send her home.

    57.3 I consider that the effects of her anxiety and her feeling of anger at Ms Ferreira Mendes' decision to ask her to go home have affected her ability to recall events.

    57.4 Ms Ferreira Mendes set out a detailed account of events only two days later. It is far more detailed than any account put together by the Claimant and I accept it as accurate.

    57.5 Little weight can be put on the text message sent over a year later by Catherine as she did not give evidence and, whilst she did reply "*Yes I do remember her doing the hair clip thing*" in response to the Claimant saying "*Julie came storming over and threw her clip at me*" we cannot have complete confidence that she agreed that Ms Ferreira Mendes threw a hair clip at the Claimant. It could well be that Catherine really just recalled Ms Ferreira Mendes giving the Claimant a hair band and curtly telling the Claimant to put her hair up. I do not think it is probable that Ms Ferreira Mendes would have thrown a hair clip at a colleague who she had no previous animosity towards and in front of a client representative.

    57.6 As the Respondent submitted, the Claimant did not allege that a hair clip had been thrown at her (clearly an aggravating circumstance) in her ET1

[HB8], in her rebuttal of the ET3 [HB30] or in her message to Pat on the same day as the incident [HB203].

58. I note here that the Claimant's inappropriate conduct towards Ms Ferreira Mendes was not treated as a disciplinary issue and I accept Ms Ferreira Mendes' oral evidence that, before leaving the private meeting with the Claimant, she asked the Claimant if she would like to sit down, if she would like water and if she wanted someone to assist the Claimant to go to the staff room and that she suggested to the Claimant that the Claimant raise her needs formally with the Respondent (there is no evidence that the Claimant then did so, except to the extent noted above).

59. Ms Ferreira Mendes fairly accepted that her discussion with the Claimant of people's varying experiences of anxiety most likely 'triggered' the Claimant but I do not consider that what she said to the Claimant was blameworthy. I consider that she was trying to help the Claimant, had a genuine health and safety concern and that the Claimant then, in her anxious and angry state, treated Ms Ferreira Mendes unfairly.

60. I accept Ms Ferreira Mendes' concern at the Claimant trying to work a check in when she said she was going to faint. I consider that Ms Ferreira Mendes was well meaning but, as the Claimant attributed her faintness to anxiety, which might have passed, it may have been more proportionate to send the Claimant to the staff room to give her time to recover from her anxiety.

61. I accept the Respondent's evidence that it is usual practice for staff to stand at a kiosk as it is difficult to greet passengers and check their passports and boarding cards whilst seated, but it is not a formal requirement.

22 August 2024 Gate closure incident

62. On 22 August 2024, the date of the incident, a manager (RC) had a formal conversation with the Claimant which was noted in a "Record of Conversation" [HB214-215] which read:

> "***Check In / Boarding error:*** *tick*
>
> ***Details of occurrence:*** *When boarding FR3161 an error with 20/20 caused the screens to not show boarding. At -25 doors were shut.*
>
> ***Supervisor report****: In future do not close the doors until -20. The problem is down to the airport but we would have had less issues if pax were allowed in until -20.*
>
> ***Did the employee notify anyone – if not why?*** *Yes*
>
> ***What can be don't*** **[sic]** ***to prevent further occurrences*** *Don't close doors until – 20. If pax arriving slowly check the screens*
>
> ***Additional comments****: I did close door at -25 because we wouldn't have*

> *been able to close on time. I did then call supervisor to see if we could let them in and keep scanning – we was told no. Won't close doors until -20 in future."*

63. Around 30 passengers missed this flight and it was reported in news outlets. The first instance cause of so many passengers missing the flight was that the airport error meant that passengers did not know it was boarding and they therefore arrived late at the gate. I accept Mr Jowett's oral evidence as follows:

    63.1 The policy of the airline that the Claimant was serving on behalf of the Respondent was that the gates would be closed 20 minutes before the flight departure.

    63.2 However the Claimant, because of the numbers of late passengers, closed the doors five minutes earlier than that.

    63.3 She called her supervisor after closing the doors (but at a point at which the gate had not been marked as closed) to check whether she had done the right thing.

    63.4 A supervisor will normally support an agent's decision but on review it was clear that the Claimant should have tried to have boarded more passengers and should have called the supervisor for guidance before she made any decision on closing the doors or making the gate as closed.

    63.5 Mr Jowett had to deal with the customers than then missed the flight.

    63.6 Mr Jowett acknowledged that the Claimant had been in a stressful situation and had remained calm. He was not in a position to comment on whether, with the timings, the doors could have been reopened after the Claimant called her supervisor.

64. I respect of this incident, and the baggage incident on 21 June 2024, Mr Jowett's concern, as he explained in oral evidence, was that the Claimant did not contact a supervisor before taking action. The Claimant was not restricted in her duties after the incidents (June and August) until her dismissal in mid-late October

Post dismissal events

65. I will come on to explain my findings in respect of the Claimant's probation review meeting and dismissal. However, I also note that in the weeks after the Claimant's dismissal she visited her GP [HB147, 160-165] and decided to continued with the same medication she had been taking and did not mention grogginess or suffering with dizziness (despite referring other effects of her anxiety).

Comparators – M and O and E

66. A formal discussion was held with an employee called M in September 2024 at which he was given a verbal warning for 14 periods of lateness totalling 607

minutes) [HB262-263]. He resigned before his probation review meeting.

67. As regards O and E, the Claimant's evidence was that there was another significant incident in which passengers ended up on the wrong flight to the wrong destination. Mr Jowett and Ms Ferreira Mendes did not give evidence on this in their witness statements. In its response the Respondent said:

> "*28 The investigation into the matter regarding 'E and O' found that E was not involved and that the root cause was because ABM brought the wrong pax to the wrong flight. These colleagues were not treated more favourably than the Claimant in similar circumstances*."

68. The Claimant in her unchallenged evidence said:

> "*86. The Respondent now says the root cause was ABM, a third party, bringing the wrong passenger to the wrong flight, and that the gate agents were "not at fault."*
>
> *87. However, the witness statement from O records that when he entered the boarding / sequence number it flagged "already boarded" and he "thought he'd already boarded them and thought nothing of it." [PG 193]*
>
> *88. In my training and experience, "already boarded" is a major red flag indicating the same boarding pass or number has been used and that someone may be unaccounted for.*
>
> *89. The proper response would be immediate escalation and checking, including contacting the dispatcher and verifying passenger reconciliation.*
>
> *90. I also personally experienced similar "already boarded" situations in the job, and the responsible approach was to re-scan passengers and reconcile properly.*
>
> *91. I was close with one of the gate agents, E. She told me at the time that both she and O were restricted from Ryanair duties while the matter was investigated.*
>
> *92. This comparator matters because the Respondent relied on 'security' framing in my case, yet appears to minimise an incident involving passengers being unaccounted for on an aircraft by attributing it to third-party error. By contrast, when faulty airport boards, which were also a third-party issue, contributed to the Barcelona incident, I was still blamed and that incident was later relied upon against me.*"

69. I cannot draw any relevant conclusions from this because it is not apparent that either E or O were in their probation period or what happened in that regard.

17 October 2024 Probationary review meeting

70. On 17 October 2024 Mr Jowett had a probation review meeting with the Claimant. No evidence was provided to me of the Claimant having been warned that she might be dismissed at the meeting or the topics for discussion at the meeting.

71. Mr Jowett was the decision maker at the meeting and was supported by a note taker (SB). Mr Jowett could not recall how long the meeting lasted. It was the Claimant's case that there was little discussion at the meeting and she was 'talked at'.

72. The handwritten notes of the meeting simply record as follows and I accept their accuracy [HB242-244]:

> "*17 October 2024*
>
> *Charlie McKechan*
>
> *Probation meeting*
>
> *Thank you for attending apologies for changing/rearranging*
>
> *Not wanting anyone with her*
>
> *Purpose of meeting*
>
> *Performance*
>
> *Attendance*
>
> *Further developments*
>
> *Absence - 6 absence days on kronos*
>
> *RTW for 4th and 5th August (Nan) no included in 6*
>
> *1.6.24 became sick migraines*
>
> *hurt foot another one – RTW*
>
> *Most recent- bronchitis- chest infection*
>
> *RTW missing for two of them*
>
> *absence policy read out to her*
>
> *Suffers from anxiety. Known to company*
>
> *FTJ* [Mr Jowett confirmed in evidence that this stands for Failed To Join indicating that the Claimant had never failed to attend work without telling

the Respondent, she had always notified the Respondent if she was not going to be absent from a shift]. - *none in Kronos*

lateness- how are you with time keeping

C- thinks she is good. Comes from Wales

14 occasions of lateness. (7 min's seemed to be the norm)

time keeping policy read out to her

C-no further comment on lateness

Conduct

2 Recorded conversations

- 21/ 6-OTP flight re-opened after CP'd

- 22/8- BCN FR 3161 boarding

another I passed to BJ

~~- in relation to a disagreement with a TL. E-mail sent to BJ from TL. C wanted to raise~~

Charlie- trained on Astral wants to go on there more

Shadowed- SI (Altea)

Likes job not the hours

Why did you apply. Left previous job in January. Went thru the airport and said to friend she would like to work there. Saw job on Indeed and rest is history

BJ stepped out to make a call

Signed Ben Jowett

Signed Claimant

Post conversation with HR

Failed probation meeting

1. 1 weeks notice [short illegible word]

*2. Season ends at the end of the month (*see below).*

Letter to be sent to CM

Right to appeal

- *not paid for time off for injury (breach in contract)*
- *screen shot shown to BJ*
- *BJ to CM keep screenshot*
- ** So work till end of month*

BJ will look into that for CM

Signatures of both parties"

73. The Claimant was not sent a letter explaining the reasons for her dismissal and she was not therefore formally offered the right of appeal. Mr Jowett explained that this arose out of a misunderstanding between him and HR as to who was responsible for preparing the letter. It seems probable that these failings coupled with the lack of clarity in the Respondent's defence of this claim contributed to the Claimant's concerns that her dismissal was discriminatory.

74. The Claimant declined to work until the end of the month as proposed by the Respondent and her employment ended on 21 October 2024.

75. I summarise the lack of clarity in the Respondent's statement of the reason(s) for the Claimant's dismissal as follows:

76. The Respondent in its first response to the Claim said [HB25]:

> "*Charlie's probationary period was ended because of 6 occasions of absence, 14 occasions of lateness and 2 recorded conversations resulting from serious security breaches.*
>
> *In terms of absence, Charlie was off with bronchitis, foot injury at work, migraine, grandmother's hearth attack and chest infection. The company was aware that Charlie suffers with anxiety and that she takes Propranolol and Mirtazapine to treat/help with it. As per the Campany's Absence Management Policy the formal process may be invoked with 3rd occasion or 5 days of recorded absence in any rolling 52-week period. As migraine can be one of the side effects of anxiety, the Company has never taken this absence into consideration as an occasion, neither have we Charlie's grandmothers heart attach nor the industrial injury*."

77. In its amended grounds of resistance (after instruction of solicitors) the Respondent said (amongst other things) [HB50]:

"[…]

5 The Claimant's employment was terminated at the end of her probationary period as a result of her poor attendance (including lateness) and conduct, which the Respondent found made her unsuitable for continued employment, as per clause 5.1.

6 In her short period of employment, the Claimant incurred six occasions of absence, 14 occasions of lateness and was spoken to in relation to serious security breaches, which were formally recorded.

7 The Respondent's Absence Management Policy provides that a formal process may be invoked on the third occasion of absence or five days of absence in any rolling 52-week period.

8 The Respondent was aware that the Claimant suffered from anxiety and therefore did not take into account absences which could have been linked to the Claimant's anxiety when considering whether to progress under the Absence Management Policy.

9 As such, the Respondent disregarded the Claimant's absence for 'migraine' on 2 June 2024, as the Claimant stated it was a result of anxiety. The Respondent also disregarded the Claimant's absences relating to her Grandmother's heart attack and a foot injury incurred at work."

78. In his witness statement Mr Jowett made a correction (as indicated with the words struck through below) and said as follows in respect of the reasons for his decision to dismiss the Claimant:

"8 Having considered Charlie's poor attendance, lateness and conduct, I believed that this made Charlie unsuitable for continued employment, as such, I made the decision to terminate Charlie's employment on 21 October 2024.

9 In making my decision I considered the following:

9.1 In her short period of employment, Charlie had incurred six occasions of absence, fourteen occasions of lateness and had also been involved in two serious security breaches that were formally recorded.

9.2 The Absence Management Policy, pages 245-250 provides that a formal process may be invoked on the third occasion of absence or five days of absence in any rolling 52-week period.

9.3 Despite the business discounting a number of absences such as a migraine on 2 June 2024, (111-112) as Charlie said this occurred as a result of her anxiety, ~~Charlie still exceeded the number of absences allowed in accordance with the Absence Management Policy~~.

9.4 On 21 June 2024, Charlie had been involved in an incident whereby she had closed the doors for a flight too early, this resulted in a number of passengers being unable to board their flight which had to be re-opened. A formal recording of this incident and the conversation that took place was placed on Charlie's file, page 200 of the bundle.

9.5 On 19 August 2024, I received an email from Juliane (Julie) Ferreira Mendes, a Team Leader. Julie informed me about an incident that occurred on 17 August 2024 whereby Charlie had been asked by Julie to come onto the floor to assist her colleagues. Charlie had responded "I'm going to faint! I can't do the floor!"

9.6 Julie informed me this statement had been made in front of Airline Representatives. Julie was concerned about Charlie's wellbeing and asked Charlie to go home. Charlie was not happy with this, and the matter escalated to Charlie crying and shouting.

9.7 Julie emphasised in her email report of the incident that once an employee informs a supervisor or Team Leader they are unwell, that person has a duty to ensure the safety of that individual by taking appropriate action, such as sending them home. A copy of Julie's email appears at pages 211-213 of the bundle.

10. I had no issue with Julie's handling of this matter and felt that she had acted properly in the circumstances.

11. Based on the above considerations and in accordance with Swissport policies and procedures, including the Attendance Management and Time Keeping Policies, pages 245-261, I made the decision that Charlie had failed her probationary period and informed her of this during the probationary review meeting, pages 242-244.

[…]

14 Charlie did not inform me, nor am I aware of Charlie informing management or HR that the reasons for her lateness, or other instances of sickness which were not discounted, were linked to *her anxiety. There is no documentary evidence to support this, which I believe there would have been had it been raised by Charlie, in the same way that her migraine absence was discounted. Enquiries have been made with the HR department as to whether Charlie informed them during her employment, that the reasons for her lateness and sickness absences were linked to her anxiety. Dominika Sabo, Associate HR Business Partner has confirmed that from a HR position, at no point did Charlie inform her or anybody else from her department, that her lateness or sickness absence could be linked to anxiety.*

15 During a Return-to-Work meeting on 2 June 2024, following an absence due to a migraine, Charlie advised that the migraine was a symptom of anxiety and that she took medication for this. However, when asked if there was anything the company needed to be aware of in order to support Charlie with any potential future absences she may have of this nature, for example did the company need to obtain a medical report, make an Occupational Health referral or if any reasonable adjustments were required, Charlie advised "No". This is documented at page 111-112 of the bundle.

16 I am aware that Charlie was treated in accordance with the Absence Management Procedure and absences relating to Charlie's anxiety (that we were aware of) were discounted. I also note that by way of support, other absences were discounted relating to her grandmother's heart attack and an injury at work, pages 119 and 125. As such, I find it hard to believe that had any other absences been flagged as being related to anxiety by Charlie, that these would not have been similarly discounted given the sympathetic approach that was adopted towards the circumstances of her absences."

79. Mr Jowett's evidence on his reasons for dismissing the Claimant can be summarised as follows (i.e. in response to cross examination, tribunal questions and in answer to re-examination questions):

79.1 Paragraph 9 of his witness statement set out the points that were considered by him but his reasons for dismissing were more limited because he discounted some of the issues outlined in paragraph 9's sub-paragraphs.

79.2 When it came to absence from work, he had only taken into account the Claimant's absence in October 2024 (three days for bronchitis which was not in breach of the Respondent's attendance standards). He said he discounted:

79.2.1 **Wednesday 24 April 2024** - [HB99] – because he did not know the cause of this absence and there was no return to work form.

79.2.2 **Sunday 2 June 2024** - [HB101, 111- 113] – because it was disability related (a migraine);

79.2.3 **Sunday 4 August 2024** - [HB104, 117, 119] - because this was not sickness absence, it related to ill health of the Claimant's grandmother.

79.2.4 **Saturday 17 and Sunday 18 August 2024** – [HB105, 121] because it was disability related absence.

79.2.5 **Monday 2 September 2024 – [HB106]** because it was caused by an industrial injury.

79.2.6 **Monday – Saturday 9 – 14 September 2024** – [HB107, 122-125] because it was caused by an industrial injury.

79.3 He had relied on the 14 instances of lateness but at the hearing on 17 October 2024 the Claimant had not suggested that any of those absences arose in consequence of disability;

79.4 The reason he dismissed the Claimant was because of the 21 June 2024 and 22 August 2024 incidents and the Claimant's absence in October 2024 and 14 occasions of lateness would not have resulted in her dismissal and were not an effective cause of her dismissal.

79.5 The incident with Ms Ferreira Mendes on 17 August 2024 was not relevant to the Claimant's dismissal and the Claimant's disability related absence on 18 August 2024 was discounted.

80. At a minimum this is a clear and concerning lack of precision in the Respondent's position.

Findings of fact on relevance of absence to the reasons for dismissal

81. I note that there are number of references in the Respondent's case to six occasions of absence. In its pleadings the Respondent referred consistently to having discounted the Claimant's absences for:

81.1 migraine (2 June 2024)

81.2 *her grandmothers ill health (4 August 2024)*

81.3 *her foot (industrial) injury (2 September 2024 and 9 to 14 September 2024).*

82. In its pleadings the Respondent failed to refer expressly to its treatment of the following absences which happened to total six days:

82.1 24 April 2024 (the Claimant also cannot recall the reason for this absence)

82.2 17 and 18 August 2024 (this was clearly due to anxiety and therefore the Claimant's disability); and

82.3 6, 7, and 8 October 2024 (bronchitis – not disability related).

83. The probation meeting notes do suggest that the Respondent sought to discount disability related absences and I accept that they evidence that Mr Jowett also took advice from HR before making his decision in an adjournment to the meeting (on the balance of probability I consider HR would have advised Mr Jowett to discount disability related matters).

84. Given the content of the original ET3 (before the Respondent instructed solicitors) and its express reference to discounting absence that could be related to disability I find that the Respondent certainly intended to discount disability related absence and conclude that it did therefore discount the absence on 17 and 18 August 2024 (which was clearly disability related).

85. The comment in Mr Jowett's witness statement that he "<u>*had no issue with Julie's handling of this matter and felt that she had acted properly in the circumstances*</u>" coupled with the Respondent's intention to discount disability related absence suggest to me that he did not penalise the Claimant for events on 17 and 18 August 2024 (and the Claimant's conduct was never treated as disciplinary matter). This is also corroborated by the nature of the words that are struck through in the minutes of the meeting which end "*C* [i.e. Charlie, the Claimant] *wanted to raise*" and which suggest that it was the Claimant that raised the incident on 17 August 2024 rather than Mr Jowett.

86. I also accept, given the reference in the notes to "*RTW missing for two of them*" that Mr Jowett discounted absence in respect of which the correct return to work process had not been followed (the absences on 24 April 2024 and 2 September 2024 (the latter which the Claimant confirmed was related to her industrial injury in any event)).

87. I therefore conclude that Mr Jowett only took into account the three days absence in October (which did not breach attendance policies). As regards its explanation of which absences the Respondent relied upon, I therefore conclude that the Respondent has been carelessly ambiguous rather than wilfully misleading.

88. As to the importance placed on this absence by Mr Jowett in his decision to dismiss, I address that below in my findings of fact on whether the security breaches were the only effective cause of the Claimant's dismissal.

Findings of fact on relevance of lateness to the reasons for dismissal

89. The notes of the probation meeting give little insight into the relevance of lateness to Mr Jowett's decision to dismiss, recording simply:

> "*lateness – how are you with time keeping*

C – thinks she is good. Comes from Wales

14 occasions of lateness (7 min's seemed to be the norm)

Time keeping policy read out to her

C – no further comment on lateness"

90. Mr Jowett accepted that the Claimant was stunned by the discussion of her 14 occasions of lateness at that meeting:

90.1 the Claimant having thought that being 6 minutes late was waived;

90.2 many of her late arrivals only being a minute over that threshold;

90.3 other than the call from SJ on 24 May 2024, no formal discussion having been held with the Claimant before then about lateness.

91. I find that the Claimant did not suggest at the probation meeting that any of her instances of lateness arose in consequence of her disability – had she done so, given its approach to her sickness absence, I consider that the Respondent would have discounted that lateness. However, the Claimant was taken aback by the discussion of her timekeeping as she, erroneously, thought she was within the permitted tolerance.

THE LAW

Time limits – the EqA

92. The relevant time-limit is at section 123 Equality Act 2010. According to section 123(1)(a) the tribunal has jurisdiction where a claim is presented within three months of the act to which the complaint relates.

93. The normal three-month time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.

94. By subsection 123(3)(a), conduct extending over a period is to be treated as done at the end of the period.

95. In **Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686**, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. An example is found in the case of **Hale v Brighton and Sussex University Hospitals NHS Trust UKEAT/0342/17** where it was determined that the respondent's decision to instigate disciplinary proceedings against the claimant created a state of affairs that continued until the conclusion of the disciplinary process.

96. It is not necessary to take an all-or-nothing approach to continuing acts. The tribunal can decide that some acts should be grouped into a continuing act, while others remain unconnected **Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548**; The tribunal in *Lyfar* grouped the 17 alleged individual acts of discrimination into four continuing acts, only one of which was in time.

97. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable as provided for in section 123(1)(b).

98. It is for the claimant to show that it would be just and equitable to extend time. The exercise of discretion should be the exception, not the *rule (*~~~~**Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576***).*

99. The tribunal has a wide discretion to extend time on a just and equitable basis. As confirmed by the Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23,** the best approach is for the tribunal to *assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. This will include the length of and reasons for the delay, but might, depending on the circumstances, include some or all of the suggested list from the case of* **British Coal Corporation v Keeble [1997] IRLR 36** as well as other potentially relevant factors*.*

100. Where the reason for the delay is because a claimant has waited for the outcome of his or her employer's internal grievance procedures before making a claim, the tribunal may take this into account (**Apelogun-Gabriels v London Borough of Lambeth and anor 2002 ICR 713, CA**). Each case should be determined on its own facts, however, including considering the length of time the claimant waits to present a claim after receiving the grievance outcome.

101. In the case of **Harden v (1) Wootlif and (2) Smart Diner Group Ltd UKEAT/0448/14** the Employment Appeal Tribunal reminded employment tribunals that we must consider the just and equitable application in respect of each respondent separately and that it is open to us to reach different decisions for different respondents.

Discrimination under the EqA

102. The Equality Act 2010 (EqA) protects employees and applicants for employment from discrimination based on or related to a number of 'protected characteristics' (section 4). These include disability (section 6).

Discrimination arising from disability - section 15 EqA

103. Section 15 EqA provides: "(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. (2) Subsection (1) does not

apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability".

104. As to what constitutes "unfavourable treatment", the Supreme Court in **Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230** held that it is first necessary to identify the relevant treatment and it must then be considered whether it was unfavourable to the Claimant.

105. The Court said that little was likely to be gained by differentiating unfavourable treatment from analogous concepts such as "detriment" found elsewhere in the Act, referring to a relatively low threshold of disadvantage being needed. One could answer the question by asking whether the Claimant was in as good a position as others.

106. What caused the unfavourable treatment requires consideration of the mind(s) of alleged discriminator(s) and thus that the reason which is said to arise from disability be more than just the context for the unfavourable treatment. There need only be a loose connection between the unfavourable treatment and the alleged reason for it, and it need not be the sole or main cause of the treatment, though the reason must operate on the alleged discriminators' conscious or unconscious thought processes to a significant extent **(Charlesworth v Dronsfield Engineering UKEAT/0197/16).**

107. By analogy with **Igen**, "significant" in this context must mean more than trivial. Whether the reason for the treatment was "something arising in consequence of the Claimant's disability" could describe a range of causal links and is an objective question, not requiring an examination of the alleged discriminator's thought processes.

108. Simler P in **Pnaiser v NHS England [2016] IRLR 170, EAT**, at [31], gave the following guidance as to the correct approach to a claim under **section 15 EqA**:

> '*(a) 'A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.*
>
> *(b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.*

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see ***Nagarajan v London Regional Transport [1999] IRLR 572****. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises.*

(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of s.15, namely, to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) For example, in ***Land Registry v Houghton UKEAT/0149/14, [2015] All ER (D) 284 (Feb)*** *a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.*

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) There is a difference between the two stages – the "because of" stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the "something arising in consequence" stage involving consideration of whether (as a matter of fact rather than belief) the "something" was a consequence of the disability.

(h) Moreover, the statutory language of s.15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the "something" leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of s.15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under s.13 and a discrimination arising from disability claim under s.15.

> *(i) As Langstaff P held in Weerasinghe, it does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to "something" that caused the unfavourable treatment.*"

109. The burden of establishing a proportionate means defence is on the Respondent. When assessing whether the treatment in question was a proportionate means of achieving a legitimate aim, the principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: **Hardys & Hansons plc v Lax [2005] IRLR 726** per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]–[55] and Gage LJ at [60]. It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own objective assessment of whether the former outweigh the latter. There is no 'range of reasonable response' test in this context: **Hardys & Hansons plc v Lax [2005] IRLR 726, CA**.

110. In **Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15** it was said, approving Mummery LJ in **R (Elias) v Secretary of State for Defence [2006] EWCA Civ 1293**, that what is required is: first, a real need on the part of the Respondent; secondly, that what it did was appropriate – that is rationally connected – to achieving its objectives; and thirdly, that it was no more than was necessary to that end.

111. It is also appropriate to ask whether a lesser measure could have achieved the employer's aim – **Essop and Naeem v Home Office (UK Border Agency) and Secretary of State for Justice [2017] UKSC 27**.

112. A complaint of discrimination arising from disability will also be defeated if the Respondent can show that at the time of the unfavourable treatment, it did not know and could not reasonably be expected to know that the Claimant was a disabled person.

113. The Respondent referred me to **A Ltd v Z (UKEAT/0273/18/BA)** in respect of knowledge and the following paragraphs of Eady J in that decision:

> 23. In determining whether the employer had requisite knowledge for section 15(2) purposes, the following principles are uncontroversial between the parties in this appeal:
>
> > (1) There need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its

consequent effects which led to the unfavourable treatment, see York City Council v Grosset [2018] ICR 1492 CA at paragraph 39.

(2) The Respondent need not have constructive knowledge of the complainant's diagnosis to satisfy the requirements of section 15(2); it is, however, for the employer to show that it was unreasonable for it to be expected to know that a person (a) suffered an impediment to his physical or mental health, or (b) that that impairment had a substantial and (c) long term effect, see Donelien v Liberata UK Ltd UKEAT/0297/14 at paragraph 5, per Langstaff P, and also see Pnaiser v NHS England & Anor [2016] IRLR 170 EAT at paragraph 69 per Simler J.

(3) The question of reasonableness is one of fact and evaluation, see Donelien v Liberata UK Ltd [2018] IRLR 535 CA at paragraph 27; nonetheless, such assessments must be adequately and coherently reasoned and must take into account all relevant factors and not take into account those that are irrelevant.

(4) When assessing the question of constructive knowledge, an employee's representations as to the cause of absence or disability related symptoms can be of importance: (i) because, in asking whether the employee has suffered substantial adverse effect, a reaction to life events may fall short of the definition of disability for EqA purposes (see Herry v Dudley Metropolitan Council [2017] ICR 610, per His Honour Judge Richardson, citing J v DLA Piper UK LLP [2010] ICR 1052), and (ii) because, without knowing the likely cause of a given impairment, "it becomes much more difficult to know whether it may well last for more than 12 months, if it is not [already done so]", per Langstaff P in Donelien EAT at paragraph 31.

(5) The approach adopted to answering the question thus posed by section 15(2) is to be informed by the Code, which (relevantly) provides as follows:

> "5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a 'disabled person'.
>
> 5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an

> objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially."
>
> (6) It is not incumbent upon an employer to make every enquiry where there is little or no basis for doing so (Ridout v TC Group [1998] IRLR 628; SoS for Work and Pensions v Alam [2010] ICR 665).
>
> (7) Reasonableness, for the purposes of section 15(2), must entail a balance between the strictures of making enquiries, the likelihood of such enquiries yielding results and the dignity and privacy of the employee, as recognised by the Code.
>
> […]
>
> 38. A Respondent will avoid the liability that would have otherwise arise under section 15 EqA if it can show that it did not know, and could not reasonably have been expected to know, of the complainant's disability. A finding that the Respondent does not have actual knowledge of the disability is thus not the end of the ET's task; it must then go on to consider whether the Respondent had what (for shorthand) is commonly called "constructive knowledge"; that is, whether it could - applying a test of reasonableness - have been expected to know, not necessarily the Claimant's actual diagnosis, but of the facts that would demonstrate that she had a disability - that she was suffering a physical or mental impairment that had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities.
>
> 39. As to what a Respondent could reasonably have been expected to know, that is a question for the ET to determine. The burden of proof is on the Respondent but the expectation is to be assessed in terms of what was reasonable; that, in turn, will depend on all the circumstances of the case.

Reasonable Adjustments

114. By section *39 (5) EqA* a duty to make adjustments applies to an employer. By section *21 EqA* a person who fails to comply with a duty on him to make adjustments in respect of a disabled person discriminates against the disabled person.

115. *Section 20(3) EqA* provides that there is a requirement on an employer, where a provision, criterion or practice of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter, in comparison with

persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

116. Section 21 of the Equality Act provides that an employer discriminates against a disabled person if it fails to comply with a duty to make reasonable adjustments. This duty necessarily involves the disabled person being more favourably treated than in recognition of their special needs.

117. The duty to make reasonable adjustments only arises where the employer has knowledge (actual or constructive) that its employee is disabled and likely to be placed at a substantial disadvantage as (Paragraph 20 (1)(b) Schedule 8 of the Equality Act 2010).

118. In **Environment Agency v Rowan 2008 ICR 218** and **General Dynamics Information Technology Ltd v Carranza 2015 IRLR 4** the EAT gave general guidance on the approach to be taken in reasonable adjustment claims. A tribunal must first identify:

118.1 the PCP applied by or on behalf of the employer

118.2 the identity of non-disabled comparators;

118.3 the nature and extent of the substantial disadvantage suffered by the Claimant in comparison with the comparators.

119. Once these matters have been identified then the tribunal will be able to assess the likelihood of adjustments alleviating those disadvantages identified. The issue is whether the employer had made reasonable adjustments as matter of fact, not whether it failed to consider them.

120. The phrase PCP is interpreted broadly. The EHRC Code of Practice on Employment (2011) ("**the Code**") says at paragraph 6.10:

> "*[It] should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions*."

121. The Code also provides at 6.21:

> "*If an employer's agent or employee (such as an occupational health adviser, a HR officer or a recruitment agent) knows, in that capacity, of a worker's or applicant's or potential applicant's disability, the employer will not usually be able to claim that they do not know of the disability and that they therefore have no obligation to make a reasonable adjustment. Employers therefore need to ensure that where information about disabled people may come through different channels, there is a means – suitably confidential and subject to the disabled person's consent – for bringing that information together to make it easier for the employer to fulfil their duties under the Act.*"

122. The Code goes on to provide at Paragraph 6.24, that *"there is no onus on the disabled worker to suggest what adjustments should be made (although it is good practice for employers to ask);* At paragraph 6.37, *that Access to Work does not diminish or reduce any of the employer's responsibilities under the 2010 Act.* At paragraph 6.28 the factors which might be taken into account when deciding if a step is a reasonable one 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*.

123. In **Lamb v The Business Academy Bexley EAT 0226/15 the EAT** commented that the term "PCP" is to be construed broadly "having regard to the statute's purpose of eliminating discrimination against those who suffer disadvantage from a disability".

124. It is also generally unhelpful to distinguish between "provisions", "criteria" and "practices": **Harrod v Chief Constable of West Midlands Police [2017] ICR 869**.

125. There is no formal requirement that the PCP actually be applied to the disabled Claimant. The EAT said in **Roberts v North West Ambulance Service [2012] ICR D14** that a PCP (in this case, hot desking) applied to others might still put the Claimant at a substantial disadvantage.

126. There are some limits to what can constitute a PCP. In particular there has to be an element of repetition, actual or potential. A genuine one off decision which was not the application of policy is unlikely to be a "practice": **Nottingham City Transport Ltd v Harvey [2013] All ER(D) 267 (Feb), EAT**. In that case the one-off application of a flawed disciplinary process to the Claimant was not a PCP. There was no evidence to show that the employer routinely conducted its disciplinary procedures in that way.

127. In **Ishola v Transport for London [2020] ICR 1204** the Court of Appeal said that all three words "provision", "criterion" and "practice" "..carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again."

128. The test of reasonableness imports an objective standard. The tribunal must examine the issue not just from the perspective of the Claimant, but also take into account wider implications including the operational objectives of the employer.

129. It is not necessary to prove that the potential adjustment will remove the disadvantage; if there is a "real prospect" that it will, the adjustment may be

reasonable. In **Romec v Rudham [2007] All ER (D) 206 (Jul)**, EAT: HHJ Peter Clark said that it was unnecessary to be able to give a definitive answer to the question of the extent to which the adjustment would remove the disadvantage. If there was a 'real prospect' of removing the disadvantage it 'may be reasonable'. In **Cumbria Probation Board v Collingwood [2008] All ER (D) 04 (Sep)**, EAT: HHJ McMullen said that 'it is not a requirement in a reasonable adjustment case that the claimant prove that the suggestion made will remove the substantial disadvantage'. In **Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10, [2011] EqLR 1075**, the EAT said that, when considering whether an adjustment is reasonable, it is sufficient for a tribunal to find that there would be 'a prospect' of the adjustment removing the disadvantage.

130. Schedule 8 EqA (Work: Reasonable Adjustments) - Part 3 limitations on the duty provides:

> *S. 20. Lack of knowledge of disability, etc*
>
> *(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know— (a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question; (b) [in any case referred to in Part 2 of this Schedule], that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement. Under Part 2 and an interested disabled person includes in relation to Employment by A, an employee of A's.*

131. If relied upon, the burden is on the Respondent to prove it did not have the necessary knowledge. The Respondent must show that it did not have actual knowledge of <u>both</u> the disability <u>and</u> the substantial disadvantage and also that it could not be reasonably have been expected to know of <u>both</u> the disability <u>and</u> the substantial disadvantage.

Harassment (disability)

132. Section 40 of the EqA renders harassment of an employee unlawful.

133. Section 26 EqA 2010 provides: *(1) A person (A) harasses another (B) if- A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of - violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account— the perception of B; the other circumstances of the case; whether it is reasonable for the conduct to have that effect*.

134. The Tribunal is therefore required to reach conclusions on whether the conduct complained of was unwanted and, if so, whether it had the necessary purpose or effect and, if it did, whether it was related to disability.

135. If the Claimant proves any of the conduct they complain about, it was unwanted. There is no need to say anything further about that.

136. It is clear that the requirement for the conduct to be "related to" disability needs a broader enquiry than whether conduct is "because of disability" like direct discrimination **Bakkali v Greater Manchester Buses (South) Limited UKEAT/0176/17**.

137. What is needed is a link between the treatment and the protected characteristic, though comparisons with how others were or would have been treated may still be instructive. In assessing whether it was related to disability, the form of the conduct in question is more important than why the Respondent engaged in it or even how either party perceived it.

138. The question of whether the Respondent had either of the prohibited purposes – to violate the Claimant's dignity or create the requisite environment – requires consideration of each alleged perpetrator's mental processes, and thus the drawing of inferences from the evidence before the Tribunal **GMB v Henderson [2016] EWCA Civ 1049**.

139. As to whether the conduct had the requisite effect, there are clearly subjective considerations – the Claimant's perception of the impact on her (they must actually have felt or perceived the alleged impact) – but also objective considerations including whether it was reasonable for it to have the effect on this particular Claimant, the purpose of the remark, and all the surrounding context. That much is clear from section 26 and was confirmed by the Employment Appeal Tribunal in **Richmond Pharmacology Ltd v Dhaliwal [2009] ICR 724**. The words of section 26(1)(b) must be carefully considered. Conduct which is trivial or transitory is unlikely to be sufficient.

140. Mr. Justice Underhill, as he then was, said in that case:

> *"A respondent should not be held liable merely because his conduct has had the effect of producing a proscribed consequence: it should be reasonable that that consequence has occurred. That…creates an objective standard … whether it was reasonable for a claimant to have felt her dignity to be violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question. One question that may be material is whether it should reasonably have Case No: 1301063/2019 22 been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very*

different weight if it was evidently innocently intended than if it was evidently intended to hurt …"

and

"…We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase…"

141. Similarly in the case of **HM Land registry v Grant [2011] EWCA Civ 769**, Elias LJ as he became said, when discussing the descriptive language of subparagraph 1:

"*Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment*."

142. In the case of **Greasley-Adams v Royal Mail [2023] EAT 86** for harassment to have occurred, the person must have been aware that it had happened in order to perceive that it was harassment. Therefore, if comments are made behind an employee's back that they become aware of later on, for example because of an investigation into their grievances about other matters, to determine whether harassment has taken place, the correct approach is to look at the Claimant's perception of the situation at the date time the alleged harassing incident took place. Consequently, if the Claimant was not aware of the harassment at the time, they could not perceive that they had been harassed at the time.

143. Further, if they then later found out about the harassment event, it could well still amount to harassment at the time they find out about it. However, whether it is reasonable for the Claimant to believe that they have been subject to harassment in accordance with section 26 (4) (c), that question is to be determined in the context of events taking place at the time the Claimant finds out about the harassing event. In the context of **Greasley-Adams**, this meant that finding out about a harassment event during an investigation meeting into his grievances and claiming this was violating his dignity, was unreasonable in the context of the employer investigation the Claimant's concerns in good faith.

144. It is for the Claimant to establish the necessary facts which go to satisfying the first stage of the burden of proof. If they do, then it is plain that the Respondent can have harassed them even if it was not its purpose to do so, though if

something was done innocently that may be relevant to the question of reasonableness under section 26(4)(c).

145. Violating and intimidating are strong words, which will usually require evidence of serious and marked effects. An environment can be created by a one-off comment, but the effects must be lasting. Who makes the comments, and whether others hear, can be relevant, as can whether an employee complained, though it must be recognised that is not always easy to do so. Where there are several instances of alleged harassment, the Tribunal can take a cumulative approach in determining whether the statutory test is met **Driskel v Peninsula Business Services Ltd. [2000] IRLR 151**.

146. In addition, if what the issue alleged by Claimant as amounting to a breach of the EqA would not be unlawful under the EqA, then it cannot be a protected act for example see **Waters v Metropolitan Police Comr [1997] IRLR 589**.

147. The employee must be subjected to a detriment, which has been decided to mean placed at a disadvantage **Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230**. Unfavourable or less favourable treatment arguments are not in accordance with the correct statutory wording of section 27. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL.** Therefore, for detriment to be proven, it is for the Claimant to show that they were or would have been, in their subjective view, placed at a disadvantage and that it was objectively reasonable for them to have held that view.

148. Detrimental treatment of a Claimant will not be because of a protected act if the detrimental treatment is caused by the way in which the protected act is done or the behaviour of the Claimant whilst communicating the protected act or gathering information for it. For example see **Woods v Pasab Limited [2012] EWCA Civ 1578** and **Martin v Devonshire Solicitors [2011] ICR 352.**

149. The detriment relied upon by the Claimant, must be linked to the protected act. The same test for causation in direct discrimination, is therefore relevant to victimisation because the statutory wording is the same.

ANALYSIS AND CONCLUSIONS

150. Whilst I have structured my analysis and conclusions by issue, I was also careful to look at the evidence 'in the round' to determine whether it suggested that the Claimant had been subjected to the unlawful treatment of which she complains (this is particularly important when it comes to allegations of harassment). Having done so I did not find cause to change my decisions on any issue or issues.

151. Of course the Claimant did not have two years' service and so did not have the legal right to a fair process but what the Respondent did was considerably short of best practice.

Discrimination arising from disability (Equality Act 2010 section 15)

152. I set out below my findings on the discrimination arising from disability claim.

153. I reminded myself during my deliberations that the "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

Security breaches

154. It is of concern that whilst the Respondent referred consistently to "two serious security breaches" there is little explanation as to why they were serious and the contemporaneous documents suggest that they were learning points for the Claimant (and the wider team in respect of the earlier baggage incident). It is also not clear why they were given the label 'security breach'.

155. Mr Jowett referred to the more serious later incident in which passengers missed their flight in his statement but he did not make any specific reference to the baggage incident. That is concerning given the importance he placed on them in oral evidence.

156. In oral evidence Mr Jowett just explained that for both incidents the Claimant should have spoken to a supervisor before taking any action and they were not treated as disciplinary offences at the time.

157. The incidents were dealt with relatively informally and there was no suggestion that the Claimant had not heeded the guidance she was given. As I noted in my findings of fact, the Claimant was not restricted in her duties after the incidents (June and August) until her dismissal in mid-late October.

158. The second, more serious incident, which Mr Jowett did at least refer to in his witness statement, gave rise to bad publicity for the Respondent but the Respondent has not put forward the case that, had the Claimant not closed the gate early, all (or even most) of the passengers would have boarded and that the airport notice boards error was therefore not the true problem. Mr Jowett said the airport notice board failure was 50% of the cause of the problem.

159. The Claimant not having two years' service, the Respondent did not need a fair or even a good reason for dismissing the Claimant. The reason just needs not to amount to unlawful discrimination. The Respondent could just rely on incompetent or unfair analysis of the so called 'security breaches'.

160. The Respondent submitted that it was entitled to apply a low threshold at a probation review and that the security incidents suggested that the Claimant was not the right fit. It said that had the Respondent been concerned about the

Claimant’s attendance or lateness or the incident with Ms Ferreira Mendes then it would not even have raised them at the probation review. That might be the case but it does not mean that the Respondent did not blunder into dismissing the Claimant for a reason that is something arising in consequence of disability.

Were the security breaches the only effective reason for the Claimant’s dismissal as Mr Jowett maintained?

161. It is of course not necessary for the Respondent to know whether the Claimant’s lateness arose in consequence of her disability.

162. As to the importance placed on absence and lateness in the decision to dismiss, it is clear that those issues were given no less prominence than the security breaches in the two grounds of resistance. In Mr Jowett’s written witness statement he just referred to the fact that there were 14 recorded occasions of lateness, without giving any insight into how he treated that record.

163. It is important to be cautious of accepting evidence that is only made clear at the final hearing. Mr Jowett’s statement does not suggest that lateness or absence was material to his decision but at the same time he does not make clear that it was not an effective cause of his decision to dismiss nor does he make clear in his written statement that the security breaches were the only effective cause.

164. I consider that, given that he had to deal with what must have been a difficult public relations issue with the 30 or so passengers who missed their flight, this was most prominent in his mind at the time he held the probation review. I find on the balance of probabilities that the Claimant, in his mind, was tainted by association with those events given that she had compounded a bad situation by closing the gates earlier than needed.

165. Whilst Mr Jowett knew that there had been another problem with the earlier baggage issue, I do not consider that this was as prominent in his mind and he did not mention it in his witness statement.

166. Given the number of lateness (albeit most of them not severe) in the course of the Claimant’s short period of employment I think it is more probable that they, coupled with the Claimant’s three days of absence, did factor in Mr Jowett’s decision to dismiss the Claimant. Given that no formal action was taken in respect of either of the ‘security breaches’, the Claimant’s duties were not restricted and she was not subjected to any further training, I do not accept that Mr Jowett would have dismissed the Claimant for the security breaches if she had had an immaculate attendance record (in terms of punctuality and sickness absence). I consider that the grounds of resistance give the most probable insight into the reasons for dismissal (lateness, attendance (albeit only three days absence) and the security breaches) and that it cannot be said that the security breaches were the only effective cause of the Claimant’s dismissal. I consider that lateness, attendance (albeit only three days absence) and the security breaches were all a significant (more than trivial) cause of the decision to dismiss.

Were any of the reasons for dismissal things that arose in consequence of the Claimant's disability?

167. I have reminded myself that the question of whether the 'something' arose in consequence of disability involves consideration of whether (as a matter of fact rather than belief) that "something" was a consequence of the disability and that this must be assessed robustly. It does not matter whether the Respondent knew that the 'something' arose in consequence of disability (all the Respondent need know is that the Claimant had the disability).

168. For the reasons I have explained in my findings of fact, the Respondent did not take into account any absences that were disability related when it took the decision to dismiss the Claimant. In this regard the decision to dismiss was not because of something arising in consequence of disability.

169. There is no suggestion that the criticisms levelled at the Claimant in respect of the security breaches, which did form part of the Respondent's decision to dismiss, were things that arose in consequence of the Claimant's disability. In this regard the decision to dismiss was not because of something arising in consequence of disability.

170. Having found that the Claimant's 14 periods of lateness were a substantial (more than trivial) reason for the Claimant's dismissal I therefore need to determine whether they arose in consequence of the Claimant's disability.

171. The Claimant clearly asserted, and told SJ on 24 May 2024, that her oversleeping and significant lateness for a 3am shift that day did arise in consequence of her disability – attributing blame to her anxiety medication (mirtazapine) for which one of the stated potential side effects is drousiness/sleepiness [HB170-171].

172. There is distinction to be made between drousiness/sleepiness and an inability to get up or wake up on time. I find that the Claimant's lateness did not arise in consequence of her disability for the following reasons:

    172.1 The occasions of the Claimant's lateness occurred on morning shifts, daytime shifts and evening shifts. As the Respondent submitted, and making allowance for the fact that the Claimant would have needed to have adjusted her sleep routine (as she changed from early to late shifts etc.), it is significant that there is no pattern to her lateness (including the fact that her three most serious occasions of lateness were in respect of a 3am shift, 12:45pm shift and 10:30am shift).

    172.2 Whilst I accept that the Claimant thought that her promptness was satisfactory until the probation review meeting and that she was caught by surprise by it being raised, she is nonetheless clearly well aware of her rights as a disabled person. Whilst I have accepted that she attributed her oversleeping on 24 May 2024 to her medication, if her other lateness had been due to her anxiety, associated trouble with sleep and medication, then on the balance of probabilities she would have said so at the probation meeting. Instead she commented that she thought her timekeeping was good and that she travelled in from Wales. After having had the time keeping policy read to her (which would have given her time to think and reflect) she said she had no other comment. It is also noteworthy that, by that point in the meeting, there had already been a discussion of the Claimant's sickness absence being attributable to her disability and the discounting of those absences.

172.3 I accept the Respondent's submission that, given the Claimant's awareness of her right to reasonable adjustments as a disabled person, and given that she knew that she had been significantly late on three occasions, I find that she would have noted this with the Respondent. The Claimant mentioned her medication, for example in return to work forms, but did not say that she needed any adjustments as a result or why. She said that she did not note this on the forms because she was having to complete them in the staff room with other people around. However, I do not consider that her privacy would have been compromised any more had, as well as noting the name of her medication, she also noted that it made her drowsy and more prone to late attendance at work. Had people been looking at what she was writing she could simple have asked them not to.

172.4 Most of the Claimant's late attendance was of only seven or eight minutes. That suggests that she was just not allowing herself enough time to get to work, bearing in mind that she had a substantial commute from Newport to Bristol airport and eight out of fourteen of her absences were during the day (when it is reasonable to assume that traffic was worse) and only the remaining six were at night time.

173. As the Claimant's lateness did not raise in consequence of her disability it cannot be said that she was dismissed because of something arising in consequence of disability and therefore her claim under S.15 EqA is not well founded and is dismissed.

174. I do not go on to make findings on the Respondent's justification defence. I simply note as follows:

174.1 This was not covered in the Respondent's witness evidence (albeit Mr Jowett explained that lateness does have an impact on the Respondent's ability to resources the services that it provides its clients);

174.2 As the Respondent submitted, the Claimant agreed in cross-examination (i) that her role required a considerable degree of responsibility and reliability; (ii) that given the nature of the Respondent's business, the attendance of its employees at prescribed times is essential and critical to the smooth running of the organisation and preventing the loss of airline clients.

Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

175. As set out above, the Respondent:

175.1 Accepted that it applied the PCP's;

175.2 Denied that it required staff to stand at kiosks rather than being seated. It said it is usual practice for staff to stand, as it difficult to greet passengers and check their passports and boarding cards whilst seated, but it is not a formal requirement.

175.3 It accepted that the adjustments contended for could have been implemented (this is not consistent with the amended grounds of resistance (see for example 43.1);

175.4 It did not accept that the PCP's/physical features put the Claimant at a substantial compared to someone without the Claimant's disability;

175.5 It did not accept that it knew of any such disadvantage suffered by the Claimant.

Did the Respondent know (or could it reasonably have been expected to know) that a fixed start time for each shift put the Claimant at the substantial disadvantage of the claimant being more likely to be late to work due to the side effects of some of her medication making her groggy?

176. For the same reasons as I set out in respect of the S.15 EqA complaint, the Claimant has not established that she was more likely to be late to work due to the side effects of some of her medication and as such she has not established the substantial disadvantage and this complaint is not well founded.

177. I also accept the Respondent's submissions as follows:

177.1 The Claimant mentioned her medication on return to work forms but did not make clear, when she could have done, that it made her groggy or that she needed adjustments as a result. Had it been the case I consider that she would have made that clear on the form.

177.2 The Claimant was asked on the form she completed in respect of her 2 June 2024 disability related absence if she needed an occupational health referral or reasonable adjustments and the Claimant indicated that she did not [HB112].

177.3 There is no mention of grogginess in the weeks after the Claimant's dismissal when she did visit her GP [HB147] and the Claimant continued with the same medication.

Did the Respondent know (or could it reasonably have been expected to know) that its sickness absence procedure put the Claimant at the substantial

disadvantage because she was likely to need to take more sick leave than those without her disability?

178. I accept the Respondent's submission that there is no evidential basis for assuming that the Claimant would need to take more sick leave because of her anxiety. As the Respondent submitted, in a 6 month period, the Claimant had one day off for a disability related migraine and the two days off in August (but they related to a set of circumstances that were out of the ordinary).

179. In any event, and without dealing with the question of whether the Respondent knew of any such substantial disadvantage, this complaint is not well founded because it is clear that the Respondent did discount disability related absence when assessing her level sick leave and so made the adjustment for which the Claimant contends.

Did the Respondent know (or could it reasonably have been expected to know) that a requirement to stand at Kiosks, rather than have the option to be seated, put the Claimant at the substantial disadvantage because the claimant suffered from feelings of dizziness if she was anxious, meaning she needed to sit down?

180. I have accepted the Respondent's contention that it is usual practice, but not a formal requirement, for staff to stand at a kiosk as it is difficult to greet passengers and check their passports and boarding cards whilst seated.

181. I accept that if a person is anxious, suffers a panic attack and starts to hyperventilate that they might feel faint or dizzy. However, I accept the Respondent's submission that there is no contemporaneous medical evidence of the Claimant's assertion that she suffered from dizziness and that it is probable, particularly as someone who the year before had learnt to drive, that the Claimant would have mentioned it to her GP. It is clear that she did not do so (despite mentioning other symptoms). It is also noteworthy that the Claimant did not mention dizziness in her ET1 or her rebuttal of the Respondent's response where she referred to the incident with Ms Ferreira Mendes [HB30].

182. I accept that whilst the Claimant told Ms Ferreira Mendes on 17 August 2024 that on that occasion she thought she was going to faint and therefore did not want to work standing at the kiosk, there is no evidence that that the Respondent was on notice that the Claimant suffered from dizziness such that having to stand at the kiosk put her at a substantial disadvantage.

183. Further, in the days after the 17 August 2024 incident there is no evidence that the Claimant, as someone who knew her entitlements under the Equality Act, suggested to the Respondent that, if being asked to work at the kiosk then she should be provided with a chair. I do not consider that the Respondent knew of the substantial disadvantage (if there was any) and so this complaint is not well founded.

184. In any event it is highly questionable whether provision of a seat at the kiosk to allow the Claimant to continue working while feeling dizzy would have been a reasonable adjustment. Had the Claimant been suffering with an anxiety or panic

attack to the extent that she was hyperventilating and so feeling dizzy or that she was going to faint, the Claimant would most probably have needed to stop work and recover in the staff room (and there is no evidence that she would not have been allowed to do so).

Did the Respondent know (or could it reasonably have been expected to know) that its practice of employees working 6 shifts on, then three shifts off, put the Claimant at the substantial disadvantage because the variable and changing shift start times, made it harder for the claimant to take her medication effectively, increasing the sedative effect of the medication, leaving the claimant feeling groggy on waking up?

185. For the reasons set out in respect of the Claimant's other complaints, the Claimant has not shown that her shift pattern put her at the alleged disadvantage and caused her to feel groggy on waking up.

186. In any event, there is no evidence to suggest that the Respondent knew or could reasonably have been expected to know that the Claimant was put at that disadvantage. The Claimant's mention of medication, particularly when the Claimant had not indicated that she thought an occupational health referral was warranted or that any adjustments were needed, did not give the Respondent actual or constructive knowledge of the substantial disadvantage for which the Claimant contends.

Did a physical feature, namely Requirement to stand at Kiosks, rather than have the option to be seated put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that the claimant suffered from feelings of dizziness if she was anxious, meaning she needed to sit down? If so, did the Respondent know that the Claimant would be put at substantial disadvantage?

187. This complaint is not well founded for the same reasons as set out in respect of the complaint that the Respondent operated a PCP of requiring employees to stand at kiosks, rather than have the option to be seated.

Harassment related to disability (Equality Act 2010 s. 26)

188. As I have found that Ms Ferreira Mendes did not say to the Claimant that 'everyone has anxiety' the Claimant was not subjected to unwanted conduct which had the necessary purpose or effect. For the avoidance of doubt I conclude that what Ms Ferreira Mendes did say to the Claimant:

188.1 Was unwanted conduct;

188.2 Did relate to the Claimant's disability; but

188.3 Was not said with purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Ms Ferreira Mendes was trying to be supportive of the Claimant and defend the company's position that many people suffer from anxiety in different ways and the company will make adjustments accordingly.

188.4 If it had the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant it was not reasonable for it to have done so because Ms Ferreira Mendes was being supportive of the Claimant and not belittling or undermining the Claimant's condition.

189. I accept the Respondent submission that the following phrases were inelegantly put by the Ms Ferreira Mendes. However, English is not her first language and she was writing in the context of a meeting with the Claimant in which the Claimant was unfair and rude in her treatment of her and in which Ms Ferreira Mendes expressly explained that she wanted to approach the situation with empathy and fairness for both sides (an adjustment must only be made if it is reasonable – EqA rights entitle disabled employees to preferential treatment but not to demand any adjustment they subjectively consider is necessary for them):

> "Like I mentioned above, I stopped to talk as the agent couldn't understand why she needs to go home and the reasons why. She turned the all conversation into her Mental Health issue. Demanding to do only a specific task. Demanding specific actions from the company that only benefits her. No concerns about her action towards the company and staff members. Not caring about her uniform standard and presentation. She wasn't able to realised her statement 'I'm going to faint!...' was the issue.
>
> […]
>
> I would like to express my wishes to avoid any kind of 1 to 1 conversation with the Agent. I will suggest a plan when she formally inform the company about her health. I've tried my best as a TL to keep my actions formal and impartial towards our staff members trying to avoid any kind of privilege base on their demands or medical conditions."

190. For these reasons the Claimant's claims are not well founded and are dismissed.

Employment Judge Woodhead

30 May 2026

Sent to the parties on:

18 June 2026

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Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Appendix

AGREED LIST OF ISSUES

Time limits

1.1 The claim form was presented on 16 December 2024 . The claimant commenced the Early Conciliation process with ACAS on 6 November 2024 (Day A). The Early Conciliation Certificate was issued on 16 December 2024 (Day B). Accordingly, any act or omission which took place before 7 August 2024 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Disability

2.1 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about?

2.1.1 Whether the Claimant had a physical or mental impairment. The respondent admits that the claimant was disabled by reason of anxiety at all material times

3. Discrimination arising from disability (Equality Act 2010 section 15)

3.1 Did the Respondent treat the Claimant unfavourably by:

3.1.1 Dismissing her;

3.2 Did the following things arise in consequence of the Claimant's disability?

The Claimant's case is that

3.2.1 a number of occasions of lateness to work and

3.2.2 some of her sickness absences arose from her disability

3.3 Was the unfavourable treatment because of any of those things? (Did the Respondent dismiss the Claimant because of lateness to work and /or those sickness absence)?

3.4 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent relies on the following:

The management of employee attendance in order to maintain a reliable staffing base. Given the nature of the Respondent's business, the attendance of its employees at prescribed times is essential and critical to the smooth running of the organisation and preventing the loss of airline clients.

The application of the Absence Management Procedure in order to achieve this legitimate aim is a proportionate means of achieving it, as is recording and addressing repeated lateness.

3.5 The Tribunal will decide in particular:

3.5.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.5.2 Could something less discriminatory have been done instead;

3.5.3 How should the needs of the Claimant and the Respondent be balanced?

3.6 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

4. Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

4.1 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? The respondent admits that it knew or could reasonably have been expected to know that the claimant was disabled.

4.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

4.2.1 A fixed start time for each shift;

4.2.2 The respondent's sickness absence procedure

4.2.3 A requirement to stand at Kiosks, rather than have the option to be seated

4.2.4 The practice of employees working 6 shifts on, then three shifts off.

4.3 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that

4.3.1 the claimant was more likely to be late to work due to the side effects of some of her medication making her groggy?

4.3.2 Because of her disability the claimant was likely to need to take more sick leave than those without her disability

4.3.3 The claimant suffered from feelings of dizziness if she was anxious, meaning she needed to sit down

4.3.4 The variable and changing shift start times, made it harder for the claimant to take her medication effectively, increasing the sedative effect of the medication, leaving the claimant feeling groggy on waking up;

And/or

4.3.5 Did a physical feature, namely Requirement to stand at Kiosks, rather than have the option to be seated put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that the claimant suffered from feelings of dizziness if she was anxious, meaning she needed to sit down

4.4 Did the Respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage? The Respondent denies that it knew or could reasonably have been expected to know that the claimant was likely to be placed at the disadvantage

4.5 What steps (the ‘adjustments’) could have been taken to avoid the disadvantage? The Claimant suggests:

4.5.1 allowing the claimant a flexible start time each shift;

4.5.2 allowing the claimant to sit down at the Kiosk

4.5.3 Allowing the claimant additional sickness absence o discounting sickness absences that arose form disability

4.5.4 Allocating the claimant a regular start time each day

4.6 Was it reasonable for the Respondent to have to take those steps and when?

4.7 Did the Respondent fail to take those steps?

5. Harassment related to disability (Equality Act 2010 s. 26)

5.1 Did the Respondent do the following things:

5.1.1 The respondents team leader dismissing an incident of anxiety with the claimant stating everyone has anxiety;

5.2 If so, was that unwanted conduct?

5.3 Did it relate to the Claimant’s protected characteristic, namely harassment ?

5.4 Did the conduct have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.5 If not, did it have that effect? The Tribunal will take into account the Claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Discrimination or victimisation

5.6 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

5.7 What financial losses has the discrimination caused the Claimant?

5.8 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

5.9 If not, for what period of loss should the Claimant be compensated for?

5.10 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

5.11 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

5.12 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

5.13 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did either party unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?

5.14 Should interest be awarded? How much?