



EMPLOYMENT TRIBUNALS

Claimant

Miss E Istenik

v

Respondent

- (1) Racesafe Limited;
- (2) Workforce People Solutions Limited;
- (3) Sirius OS Solutions Limited.

Heard at: Norwich (in person)

On: 6 and 7 July 2026

Before: Employment Judge M Warren (sitting alone)

Appearances

For the Claimant: Miss Harrison, Counsel

For the Respondent: Mr Allsop, Counsel

Written reasons having been requested in accordance with Rule 60 of the Employment Tribunal Rules of Procedure 2024, the following reasons are provided:

REASONS

Background

1. The employment history to the matter is a controversial topic in this case. Putting it in neutral terms, Miss Istenik's engagement with the First Respondent commenced on 14 December 2020 and ended on 7 April 2021. After Early Conciliation between 5 July and 16 August 2021, she issued these proceedings on 15 September 2021.
2. Her claims originally, were of disability discrimination and unfavourable treatment pursuant to the Agency Worker Regulations.
3. There are three Respondents. The First Respondent Racesafe Limited is the entity for whom Miss Istenik actually carried out some physical work. The Second Respondent, Workforce People Solutions, was dissolved on 25 December 2025, but I am told is the subject of a High Court Order made on 31 December 2025 by which its dissolution is deemed not to take place until 31 December 2027. The Second Respondent had been in Administration. According to Companies House, the Administration came to an end on 25 September 2025. The Third Respondent is active, according to Companies House.

4. Whilst all the Respondents filed a Response to these proceedings, Respondents Two and Three have taken no part in this hearing and offered up no evidence.
5. Miss Istenik is a Machinist and she was placed with the First Respondent as an Agency Worker. At a Public Preliminary Hearing before Employment Judge Dobbie on 24 February 2023, EJ Dobbie found that:
 - 5.1. Miss Istenik was a disabled person at all material times;
 - 5.2. The Third Respondent was her employer;
 - 5.3. The First Respondent was the end user; and
 - 5.4. The Second Respondent was an Intermediary Agency.
6. No written reasons were provided for that decision.
7. The matter came before me for a Case Management Preliminary Hearing on 19 February 2025 when the List of Issues was finalised.
8. The agreed List of Issues is as set out, cut and pasted in, below:

THE PARTIES

1. The Claimant was employed by the Third Respondent within the meaning of section 83 of the EA 2010.
2. The Second Respondent was an intermediary agency between the First and Third Respondent. The Claimant entered a Work Finder Agreement with the Second Respondent on 10 December 2020.
3. The Claimant was supplied to work for the First Respondent as a Machinist. The First Respondent was the end-user of the Claimant's services and thus a principal within the meaning of section 41(5) of the EA 2010.

DISABILITY & RESPONDENTS' KNOWLEDGE

4. The Claimant was disabled by reason of her right arm impairment within the meaning of section 6 of the EA 2010 at all material times (March 2021 to April 2021).

5. Did the First Respondent know or ought it reasonably to have known that the Claimant was disabled at the material time?
6. Did the Second Respondent know or ought it reasonably to have known that the Claimant was disabled at the material time?
7. Did the Third Respondent know or ought it reasonably to have known that the Claimant was disabled at the material time?

CLAIMS AGAINST THE FIRST RESPONDENT (AS PRINCIPAL – SECTION 41(5))

8. Did the First Respondent (a principal) discriminate against the Claimant (a contract worker) contrary to section 41(1)(b) of the EA 2010 as particularised below:

Failure to Make Reasonable Adjustments – Sections 20/21, EA 2010

9. Did the First Respondent operate the provision, criterion, or practice ('PCP') of requiring its staff to perform the full duties of their role?
10. Did that PCP place the Claimant at a substantial disadvantage because of her disability in comparison with persons who are not disabled? The Claimant will say that she lacked the physical strength and dexterity in her right arm/hand to meet the demands of her full duties.
11. Did the First Respondent know, or could it reasonably be expected to know about the disadvantage?
12. What steps was it reasonable for the Respondents to have to take to avoid the disadvantage? The Claimant will say:
 - a. The First Respondent should have allowed her a longer period of sickness absence (until the end of June 2021).

- b. The First Respondent should have allowed her to work lighter duties such as prepping garments.
- c. The First Respondent should have reduced the Claimant's targets. The Claimant was required to produce 47 jackets per week. That target should have been reduced to between 35 to 40 jackets per week.
- d. The First Respondent should have placed the Claimant in an alternative role. The Claimant could have been placed in the golf wear department, which involved production of smaller items such as equipment covers and scarfs.

13. Did the First Respondent fail to take that step or steps?

Discrimination Arising from Disability – Section 15, EA 2010

14. Did the First Respondent (James E. How) treat the Claimant unfavourably by, on or around 9 April 2021, not allowing her to continue her work as a Machinist?

15. Did the Claimant's sickness absence from 23 March 2021 arise in consequence of her disability?

16. Was the treatment because of the Claimant's sickness absence?

17. Was the treatment a proportionate means of achieving a legitimate aim?

CLAIMS AGAINST THE FIRST/SECOND RESPONDENT (SECTION 111 LIABILITY)

18. Was the First Respondent in a position to commit a basic contravention in relation to the Second Respondent within the meaning of section 111(7) of the EA 2010?

19. Did the First Respondent instruct, cause, or induce (whether directly or indirectly) or attempt to instruct, cause, or induce the Second Respondent to commit a basic contravention against the Claimant? The Claimant will say the basic contravention is not allowing her to continue her work as a Machinist contrary to section 15 of the EA 2010.

CLAIMS AGAINST THE THIRD RESPONDENT (AS EMPLOYER – SECTION 83)

20. Did the Third Respondent (an employer) discriminate against the Claimant (an employee) contrary to section 39(2) of the EA 2010 as particularised below:

Discrimination Arising from Disability – Section 15, EA 2010

21. Did the Third Respondent treat the Claimant unfavourably by, on or after 9 April 2021:
- a. Terminating her assignment with the First Respondent.
 - b. Terminating her employment with it (the Third Respondent).
22. Did the Claimant's sickness absence from 23 March 2021 arise in consequence of her disability?
23. Was the treatment because of the Claimant's sickness absence?
24. Was the treatment a proportionate means of achieving a legitimate aim?

NOTICE PAY

25. Was the Claimant entitled to notice upon termination of her assignment with the First Respondent and /or her employment with the Third Respondent?
26. If so, to what notice period was the Claimant entitled in either case? The Claimant will say she was entitled to 1 week.

27. Was the Claimant in fact given notice of termination of either her assignment with the First Respondent and/or her employment with the Third Respondent? The Claimant will say notice was not given.

28. If not, was the Claimant entitled to payment in lieu of that notice? The Claimant will say no payment in lieu of notice has been made.

29. If so, which Respondent was responsible for payment of the Claimant's notice pay?

REMEDY

30. What financial losses has the discrimination caused the Claimant?

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

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

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

34. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

35. Did the Claimant raise a grievance?

36. If not, did the Claimant unreasonably fail to comply with the ACAS Code by not raising a grievance?

37. If so, is it just and equitable to decrease any award payable to the Claimant? By what proportion, up to 25%?

38. Should interest be awarded? If so, how much?

39. Should the Tribunal make any declarations? If so, what declarations should be made?
9. Ms Istenik did not pursue her claims pursuant to section 111(7). As a consequence, her claims against the Second Respondent were not pursued.
10. The notice claim against the First Respondent was not pursued.

Evidence

11. In terms of evidence for this hearing, I had before me a bundle of documents, paginated and indexed to page 258, witness statements from Miss Istenik and from Mr James Howe, Managing Director and owner of the First Respondent. I also had a helpful opening note and chronology from Mr Allsop, for which I am grateful.

The Law

12. The relevant law is in the Equality Act 2010

Burden of Proof

13. In respect of the burden of proof, s.136 reads as follows:
- “(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred;
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

Reasonable Adjustments

14. Section 20 defines the duty to make reasonable adjustments, which comprises three possible requirements, the first of which might apply in this case set out at subsection (3) as follows:-
- “(3) The first requirement is a requirement, where a provision criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage”
15. Section 21 provides that a failure to comply with such requirements is a failure to make a reasonable adjustment, which amounts to discrimination.
16. There are five steps to establishing a failure to make reasonable adjustments (as identified in the pre-Equality Act 2010 cases of

Environment Agency v Rowan [2008] IRLR 20 and HM Prison Service v Johnson [2007] IRLR 951). The Tribunal must identify:

- 16.1. The relevant provision criterion or practice applied by or on behalf of the employer;
 - 16.2. The identity of non-disabled comparators, (where appropriate);
 - 16.3. The nature and extent of the substantial disadvantage suffered by the disabled employee;
 - 16.4. The steps the employer is said to have failed to take, and
 - 16.5. Whether it was reasonable to take that step.
17. The duty is to make “reasonable” adjustments, to take such steps as it is reasonable for the employer to take to avoid the disadvantage. The test is objective. Our focus should be not on the process followed by the employer to reach its decision but on practical outcomes and whether there is an adjustment that should be considered reasonable. It is for the tribunal to determine, objectively, what is reasonable. It is not a matter of what the employer reasonably believed. Unusually, the tribunal may substitute its view for that of the employer and it is permissible for the tribunal to conclude that different adjustments would have been reasonable from those contended for by the Claimant: see Smith v Churchills Stairlifts Plc [2006] ICR 524 CA; Royal Bank of Scotland v Ashton [2011] ICR 632 EAT; Garrett v LIDL Ltd UKEAT 0541/08; Southampton City College v Randal IRLR 2006 18; Project Management Institute v Latiff [2007] IRLR 579.
18. On the application of the burden of proof to claims of failure to make reasonable adjustments, section 136 requires that the claimant prove that the PCP was applied, and that it placed them at a disadvantage. They should also put forward and identify some potentially or apparently reasonable adjustment. If they do that, the burden of proof then shifts to the respondent that it would not have been reasonable to expect them to have made the adjustment, (paragraph 43 of Rentokil Initial UK Limited v Miller [2024] EAT 37).

Disability Related Discrimination

19. Disability Related discrimination is defined at s.15 as follows:

- (1) *A person (A) discriminates against a disabled person (B) if—*
 - (a) *A treats B unfavourably because of something arising in consequence of B's disability, and*

(b) *A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

(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.*

20. Simler P, (as she then was) reviewed the authorities and gave helpful guidance on the correct approach to s15 in Pnaiser v NHS England [2016] IRLR 170 which may be summarised as follows:

20.1. The tribunal should first identify whether the claimant was treated unfavourably and if so, by whom.

20.2. Secondly, the tribunal should determine what caused the treatment, focussing on the reason, (not motive) in the mind of the alleged discriminator, possibly requiring consideration of the conscious or unconscious thought processes of that person, but keeping in mind that the actual motive is irrelevant. There may be more than one cause of the treatment, the “something” need not be the main or sole reason, but it must have a significant, (more than trivial) influence and amount to an effective cause of the unfavourable treatment.

20.3. Thirdly, the tribunal must then determine whether the reason for the unfavourable treatment arose because of the claimant’s disability. There could be a range of, more than one, causal links. However, the more links there are, the harder it may be to establish the required connection. The question of causation is an objective test and does not entail consideration of the thought processes of the alleged discriminator. There is no requirement that the respondent know of the causal link between the disability and the, “something arising”.

Knowledge

21. For complaints of failure to make reasonable adjustments or disability related discrimination to succeed, the employer must have had real or constructive knowledge of the Claimant’s disability. That is, of each element of what defines disability. The employer does not need to know that those elements in fact meet the definition. See Gallop v Newport City Council [2013] EWCA Civ 1583.

22. In A Ltd v Z UKEAT/0273/18/BA HHJ Eady QC gave the following guidance on knowledge, in the context of disability related discrimination:

(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) longterm 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.

Findings of Fact

23. The First Respondent is the manufacturer of equestrian body protectors and apparel. Mr Howe is the Managing Director.
24. The main product of the First Respondent is equestrian reinforced body protectors; I will refer to those as 'jackets' as the parties did. They are heavy duty and to manufacture them is physically demanding on machinists. Experienced machinists have to be trained by the Respondent because of the unusual nature of the product.
25. The First Respondent also produced other bespoke products such as jockey silks and colours, the colours for their hard hats and also covers for golf clubs. It has 30 to 40 employees in total, including those working in the warehouse and on assembly. The workforce included 12 full time Machinists, two of whom had been employed for 10 years or more on the bespoke products side of the business, including the golf club covers.
26. The First Respondent also tended to use two to four machinists provided by agencies. Their aim would be to train up those machinists over a period of 26 weeks and if they proved to be able to work to a sufficient standard, they were then taken on as permanent employees.
27. Between December 2020 and June 2021, demand was high for the Respondent's products and they needed more machinists, if they could get them. The First Respondent used a number of agencies to recruit machinists, including the Second Respondent who offered Miss Istenik as a candidate. She attended for a sewing test on 10 December 2020 and was taken on by the First Respondent, commencing a period of training on 14 December 2020.
28. Miss Istenik's arrangements with the Second and Third Respondent were not known to the First Respondent. As far as Mr Howe was concerned, the Second Respondent was Miss Istenik's employer and it did not realise that in fact, as per Employment Judge Dobbie's finding, the Third Respondent was the employer and the Second Respondent was the intermediary Agency finding Miss Istenik work.
29. The contract of employment with the Third Respondent is at page 88 of the Bundle. The period of notice provided for is in accordance with the statutory minimum, (page 89). Miss Istenik was paid by the Third Respondent.
30. Miss Istenik was good at what she did and she was well thought of.

31. I was referred to an email of 24 February 2021 from Mr James Howe to somebody called Mr Canavan, at the Second Respondent. In that he wrote as follows, (page 112):

“E Istenik now has a full workload each week. It is unfortunate that she has had to take next week off due to cramps in her hand, but we do understand that it is a physical job and would like to reiterate to her that it does get easier as they become more experienced.

Dot has said that Erika is a talented machinist that makes a quality garment, so we look forward to having her back after her week’s rest.”

32. Miss Istenik had taken some time off work as leave because her hand was sore. She was absent for a week. This was the first manifestation of problems with her hands for Miss Istenik. It is usual, a common occurrence for the First Respondent, that machinists new to its particular work would have sore hands to start with, because it is such heavy work. This normally passes as the machinist becomes accustomed to the role, as corroborated by the email quoted above.
33. I note the production worksheets in the Bundle, (pages 145 – 153) which show that the number of garments Miss Istenik was expected to complete in a week rose from 8 to start with, up to 42 in her final week at work. I also accept that 42 garments a week was the standard expected of an experienced machinist.
34. Miss Istenik returned to work on 8 March after her period of leave. The week before her leave she completed 40 garments, the week of her return she did 36 and the following week she did 42.
35. On 23 March 2021, Miss Istenik commenced a period of absence from work from which she did not subsequently return. The first Fit Note for that period, (page 169) refers to as the relevant condition, “nerve impingement in hand”.
36. The Fit Note’s that followed gave more or less the same reason for absence as 169, although some stated hand pain or hand problem. The fit notes all stated simply that Miss Istenik was not fit to work, there was no suggestion of any possibility of her being fit to work if any advice from the GP were followed.
37. On 26 March 2021, Miss Istenik received texts from her Supervisor; these are set out at pages 120 – 122, in fact the first text is from Miss Istenik herself. She says,

“I would like to let you know that I have sick note til 2.4 but still not fit for work. And also I have a physiotherapy for 3 weeks from yesterday.”

38. Dot, who is the Supervisor, replied,

“Ok Erica thanks for letting me know, I hope you get it sorted, so don't you think you'll be back on the 5th of April? Take care. Sorry I mean Tuesday 6th of April as 5th is a bank holiday.”

39. Miss Istenik replies,

“7th or 8th April I will have appointment with physiotherapy when I will be finishing my exercises 3 weeks plan and if I will be able to move my body without problems I think the doctor can end my sick so the week after easter definitely know.”

40. On 6 April 2021, a recruiter at the Second Respondent who I will call VI, telephoned Miss Istenik and asked her when she would be back at work. She told him that she did not know, she was to have physio for three weeks, was still in pain and was in need of another appointment with her GP. VI told her that if she did not return to work she could lose her job.

41. The next day VI telephoned Miss Istenik and told her that the First Respondent did not require her services any more. This was not true.

42. On Friday 9 April 2021, Mr Howe emailed Miss Istenik and asked her if she would be interested in returning to prepping garments up to the foam stage, which would be easier on her hands. Miss Istenik replied that she would speak to him the following Monday, (12 April 2021, page 124).

43. Miss Istenik then called VI and asked him for confirmation in writing that the First Respondent did not want her any more.

44. On Sunday 11 April 2021, she followed that up with a request that it be put in writing, (page 126). She asked for a letter as proof,

“...that the Racesafe company doesn't want me to be their employee any more and they want to replace me with someone else.”

45. On 12 April 2021, Miss Istenik met Mr Howe. There is a dispute as to what happened in this meeting. I accept the evidence of Mr Howe because it is corroborated by contemporaneous documents, in particular his email to Miss Istenik on 9 April 2021 quoted above and his email after the meeting on 16 April 2021, (page 124) in which he wrote,

“To avoid any confusion, we agreed you would keep us updated on your hands. Once your sick note ends on 22 April, we will then discuss if there is a way to accommodate you. We do not expect you in work in the meantime.”

46. Miss Istenik's suggestion that Mr Howe invited her to a meeting to see if she would be interested in prepping, only then to back track at the meeting, is less likely, than that they did in fact discuss precisely that. I therefore find that when Miss Istenik arrived at the meeting with Mr Howe,

she explained that she had been surprised to receive his email because she had been “let go” by the Agency. Mr Howe was surprised to hear that.

47. In the meeting, Mr Howe said that the First Respondent would try to accommodate her on light duties once her Fit Note expired and she was ready to go back to work.
48. Prepping work was not an existing task, but a task that the First Respondent was prepared to carve out of its production method. It would have entailed preparing the jacket to the point where the hard work of inserting and sewing in the supportive foam was necessary.
49. Also on 12 April 2021, after Mr Howe’s earlier email, the Second Respondent sent two emails to Miss Istenik. The first amounted to a “to whom it may concern” reference which confirmed her employment dates as 14 December 2020 to 19 March 2021, (that is a date before her sickness absence began, page 127). The second confirmed that her assignment with the First Respondent had been terminated on 7 April 2021 due to a lack of demand within production, (page 143).
50. I accept Mr Howe’s evidence that this is not true and that he was not aware of this email until it was copied to him in July 2021. I accept that the First Respondent did not instigate or request in any way, that either the Second Respondent or the Third Respondent terminated Miss Istenik’s employment or indicated that it did not want her back. The First Respondent did want her back as soon as she was fit to return to work.
51. The First Respondent did not hear from Miss Istenik again until she commenced Early Conciliation through ACAS in July 2021.
52. On 16 April 2021, Miss Istenik wrote to the Second Respondent to complain that she had not received payment, that is of her statutory sick pay. The Second Respondent responded that as the period covered by her latest Fit Note was after the termination of her placement with the First Respondent, they would not cover it, (page 143).
53. On 23 April 2021, Miss Istenik emailed the Second Respondent to complain that by not paying her sick pay, it had terminated her employment without notice.
54. During May 2021, the First Respondent was desperate for machinists. It took a number of new machinists on, some of whom did not work out for them. It would in that time have welcomed Miss Istenik back if she had made herself available and been fit for work.
55. On 20 June 2021, Miss Istenik’s last sick note expired. She had continued to receive statutory sick pay to that date. Miss Istenik commenced new employment on 5 July 2021, that is also the date on which she commenced Early Conciliation.

56. Mr James Canavan of the Second Respondent informed Mr Howe at some point after this date, when he contacted the Second Respondents, that the Third Respondent had terminated Miss Istenik's employment so as to avoid paying statutory sick pay; although it seems to have failed in that regard, given that it continued to pay her statutory sick pay.

Conclusions

Disability

57. Employment Judge Dobbie has held that Miss Istenik was a disabled person at the relevant time, which she defined as March to April 2021.
58. What of the First Respondent's knowledge of disability? Did the First Respondent know or ought it to have reasonably to have known that Miss Istenik was disabled?
59. There was no prior history of Miss Istenik having such problems. At that point, the problems had not lasted more than 12 months. Painful hands were a common issue for machinists new to this particular job. There was nothing before the First Respondent that gave any indication that the impairment had a substantial adverse impact on Miss Istenik's day to day activities. Nor was there anything before them to suggest that the impairment could well last more than twelve months. The First Respondent did not know that Miss Istenik met the definition of a disabled person.
60. The question is, ought it to have reasonably known, did it have constructive knowledge? Not on the information before it, but ought it to have made further enquiries? Ought it, for example, to have made enquiries of Miss Istenik's GP or an Occupational Health Advisor?
61. In the context of this particular employment situation, where Miss Istenik is employed by a third party, where the period of absence at the relevant time had been fairly short and where problems of this nature are common and generally resolved as the machinist becomes used to and adapts to the daily tasks of their work, this is not in my judgement, a case where a reasonable expectation to make further enquiries has arisen.
62. I find that the Respondent did not know and could not reasonably have been expected to know, that Miss Istenik was disabled.
63. That in essence brings an end to Miss Istenik's case against the First Respondent, but I will go on to consider the case on the hypothetical basis, had I decided the Respondent did have knowledge or constructive knowledge of Miss Istenik's disability.

Reasonable Adjustments

64. It is accepted that the First Respondent had the PCP of requiring staff to perform full duties. This PCP did place Miss Istenik at a disadvantage at

the material time, in that because of her physical impairments, she was not able to meet the full duties of her role and she was not able to make 42 jackets a week.

- 65. The Respondent knew that Miss Istenik's physical impairments meant that she was finding it hard to make the 42 jackets target.
- 66. What steps would it have been reasonable for the First Respondent to take?
- 67. As set out in the List of Issues, Miss Istenik argues for the following:

a. *Allowing her a longer period of absence to the end of June 2021*

- 68. The First Respondent allowed her in effect an open ended period of sickness absence. Mr Howe made it clear to Miss Istenik in the meeting on 12 April 2021 that when she was fit to return to work, they would look to ways to accommodate her. She was a good machinist and the First Respondent wanted her back.

b. *Allowing her lighter duties such as prepping garments*

- 69. That is precisely what Mr Howe was prepared to consider when Miss Istenik was fit to return to work, it was his idea in the first place.

c. *A reduction in targets*

- 70. Miss Istenik's targets were not 47 jackets per week. The target for fully trained Agency Machinists was 42. Mr Howe was prepared to reduce that target to accommodate Miss Istenik when she was fit to return to work and he made that clear to her on 12 April 2021.

d. *Placement in an alternative role in the golf wear department*

- 71. Golf wear was, as I have explained, covers for golf clubs prepared by two specific machinists who had worked for the Respondent in that particular role for 10 years each and who were not trained on the heavier equestrian jacket product. They did not just make golf club covers, which was a very small part of the First Respondent's business, they also made other bespoke sporting apparel, such as the jockey silks and helmet covers.
- 72. I accept Mr Howe's evidence that placing Miss Istenik in this department would have entailed dismissal or displacement to a supernumerary role of one of those two long serving employee machinists. I find it would not have been reasonable to expect the First Respondent to have done that, particularly in the context that it was prepared to and had offered the above adjustments I have just set out.

- 73. Miss Istenik was not fit for work. The First Respondent made it clear that when she was fit to work, it would look to put in place reasonable adjustments which included three of the four contended for in the List of Issues.
- 74. For all these reasons the claim for failing to make reasonable adjustments would have failed.

Discrimination arising from disability - Section 15 Equality Act 2010

- 75. The First Respondent did not treat Miss Istenik unfavourably. It did not on or around 9 April 2021, as per the List of Issues, or at any time, not allow her to continue working as a Machinist.
- 76. The First Respondent made it clear that Miss Istenik would be welcomed back once her certified unfitness for work came to an end. Miss Istenik's absence was as a consequence of her disability, but she was not treated unfavourably because of her absence.
- 77. This claim would have failed had I found that the First Respondent had the required knowledge. The question of justification would not have arisen.

Section 111(7) claim

- 78. Miss Istenik no longer pursues her claim against the First Respondent or the Second Respondent pursuant to s.111(7).
- 79. The claim was that the First Respondent was in a position to commit a basic contravention in relation to the Second Respondent and that it instructed, caused or induced directly, or indirectly, the Second Respondent to discriminate against Miss Istenik or attempted to do so.
- 80. Had the claim been pursued, I would have found on the facts found, that the First Respondent did not do so.

Claim for Notice pay against the First Respondent

- 81. This claim was not pursued.

Claims against the Second and Third Respondents

- 82. What then of claims against the Second and Third Respondents?
- 83. The claim against the Second Respondent is no longer pursued because of the concession made in relation s.111(7).
- 84. The claim is pursued against the Third Respondent, pursuant to s.15 of the Equality Act 2010; discrimination arising from disability.

85. The first question then is what of the Third Respondent's knowledge of disability.
86. The Third Respondent has chosen not to take part in these proceedings. In the Grounds of Resistance, (page 52) the Third Respondent denies that it was Miss Istenik's employer. EJ Dobbie found that it was.
87. At paragraph 21 of the Grounds of Resistance, the Third Respondent said that Miss Istenik continued to receive statutory sick pay until 7 June 2021 and at paragraph 24, that was in accordance with the Fit Notes that she was submitting.
88. The Third Respondent therefore knew that Miss Istenik was continuing to have long term issues with her hand. It did not have the knowledge that the First Respondent had that hand issues are common with machinists new to the work at the First Respondent and that such issues usually get better.
89. In these circumstances, one can reasonably expect an employer to make further enquiries of the employee's GP and / or make a referral to Occupational Health. Absent any contrary evidence from the Third Respondent, I find that it had constructive knowledge of Miss Istenik's disability.
90. In respect of the s.15 claim, there are two complaints of unfavourable treatment. The first was of the Third Respondent terminating Miss Istenik's assignment with the First Respondent. That is no longer pursued and rightly so.
91. The second complaint of unfavourable treatment as set out in the List of Issues, is terminating her employment. This I confess is problematical. Miss Istenik cannot pinpoint a time when she says her employment was terminated. I do not think that the email, (page 199) on 16 April 2021 when VI wrote,

"I can see your sick note is dated the 9th of April, which is after the date your assignment ended, therefore we are not able to process another sick note."

can be interpreted as terminating employment.

92. The fact is that Miss Istenik continued to receive statutory sick pay to the expiry of her last Fit Note on 29 June 2021. That indicates her employment continued. There is no evidence from Miss Istenik about the termination of employment other than her assertion at paragraph 21 that it was on 23 April 2021 because she had not received statutory sick pay. Her case is not that she resigned because of a breach of contract by not receiving payment and of course, she thereafter did receive that sick pay.
93. I am driven to the conclusion that her employment was not in fact terminated by the Third Respondent. It seems to have come to an end as

a result of Miss Istenik obtaining alternative employment elsewhere on 5 July 2021.

94. Therefore Miss Istenik's claim of disability related discrimination against the Third Respondent fails because she was not subjected to the unfavourable treatment, (dismissal) that she relies upon.
95. Turning lastly to the claim for notice pay against the Third Respondent. It follows that too must fail, because her employment was not terminated by the Third Respondent. Had it in fact been terminated during the period in which she was in receipt of statutory sick pay, she would not have been entitled to damages because all that the weeks' notice would have amounted to, would have been a week's statutory sick pay, which she received anyway.
96. The upshot of it all is that Miss Istenik's claims fail; they do not succeed.

Approved by:

Employment Judge M Warren

Date: 29 July 2026

Sent to the parties on:

11 August 2026

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For the Tribunal Office.

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