Neutral Citation Number: [2023] EAT 61

Case No: EA-2021-000657-AS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 18 January 2023

Before :

HIS HONOUR JUDGE JAMES TAYLER

- -

Between :

LYDIA EDWARDS	**Appellant**
- and -	
PICK EVERARD	**Respondent**

- -
- -

Ms N.H Mallick (Direct Public Access) for the **Appellant**
Mr R Hignett (instructed by Shakespeare Martineau) for the **Respondent**

Hearing date: 18 January 2023

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JUDGMENT

SUMMARY

Disability discrimination

The employment tribunal did not err in law in dismissing the claims. Employment tribunal decision making, and reasons considered.

HIS HONOUR JUDGE JAMES TAYLER:

1. This is an appeal against the judgment of the employment tribunal sitting at London Central, Employment Judge Stout with members on 4 to 7, 10 to 13 May and 14 and 17 May 2021 in chambers. The judgment was sent to the parties on 26 May 2021. The judgment runs to some 82 pages and 252 paragraphs in which the employment tribunal considered a large number of complaints raised by the claimant. This appeal relates to a limited number of those complaints.

2. The broad outline facts relevant to this appeal are as follows. The respondent is a construction consultancy with 13 offices including one in London. It employs approximately 550 employees. The claimant was employed by the respondent from 6 June 2018 as a senior construction health and safety consultant. The claimant has four degrees including a master's degree and a qualification in applied health and safety.

3. The claimant worked at the respondent's London office. At the time of her recruitment the claimant informed the respondent that she was dyslexic. She produced a letter of 5 June 2018 in the employment tribunal bundle of documents that used the term "severe dyslexia". The employment tribunal held that that letter had not been sent at the time it was dated.

4. The claimant discussed her disability with Jo Morrish, formerly Director of HR and Training, on 11 June 2018. The claimant said that she would require a laptop computer and that she occasionally used her iPhone to record notes of meetings and other notes when she was out of the office. The claimant stated that her dyslexia had not really affected her in previous roles and that she did not require other adjustments.

5. The claimant said that she had dyslexia apps on her phone, including those that helped her organise her work and used a special calculator. The claimant asserted that there was an agreement with Mrs Morrish at the outset of her employment that she could save documents on her personal drive. That contention was rejected by the employment tribunal. The claimant was found to be an unreliable witness in numerous respects.

6. At paragraph 48 of the Judgment, the employment tribunal noted that the claimant produced

a dyslexia report that suggested that she had difficulty in using library systems. The claimant referred in her statement to difficulty in dealing with numerical codes and filing.

7. The employment tribunal found that the approach adopted by the claimant, whereby she saved documents to her personal drive and then subsequently uploaded them on to the shared drive, was more time consuming than saving them on the shared drive from the outset. Moving the documents from her personal drive to the shared drive was more than a matter of clicking and dragging them. The employment tribunal concluded that the issues that arose in uploading documents to the shared drive after they had been saved on the claimant's personal drive, was often because they had been saved in the wrong file to start with.

8. At paragraph 49, the employment tribunal noted that it took a little longer to save documents on the respondent's server than it would on a personal drive because it was necessary to look up the right job number, but that would be the case at whatever stage the document was uploaded to the respondent's shared drive. The respondent's policy required documents to be uploaded to the shared drive rather than being kept on a personal drive.

9. The employment tribunal held at paragraph 51 that Jeff Hughes-Jones, an Associate Director of the respondent, had raised a concern with the claimant about the way in which she was saving documents. The claimant had not, when the concern was raised, suggested that she was saving documents on her personal drive because of her disability.

10. The employment tribunal went on to find at paragraph 135 that at about the time of an associate recruitment process in May or early June 2019, it had been noted that the claimant was using her mobile phone more often for long periods of time. John Sharp, Regional Director for London and the South East, met with the claimant and cautioned her about excessive use of her personal mobile phone during working hours. The employment tribunal accepted his evidence that when challenged about using her mobile phone, the claimant had not suggested that she was using apps on her mobile phone that were necessary for her to use because of her disability. Nor did she suggest that she had transferred her work sim card into her personal mobile phone. That suggestion

was raised for the first time at the employment tribunal hearing. The employment tribunal decided they did not need to determine whether the sim card had been transferred because this suggestion had not been made to the respondent, paragraph 135.

11. In June 2019 a disciplinary investigation commenced. A number of issues in addition to those that are relevant to this appeal were investigated. One of the matters that was raised in the disciplinary process was that the claimant was saving documents to her personal drive which was contrary to the respondent's procedures. The respondent considered it was a very serious issue. During the disciplinary process, the issue of excess mobile phone use was raised again.

12. At paragraph 144, the employment tribunal noted that there had been criticism of Mr Sharp for raising the issue of mobile phone use. The claimant suggested that her phone records should have been checked. The employment tribunal noted again that when Mr Sharp had challenged the claimant about her mobile phone use, she had not suggested that it resulted from using apps that were necessary because of her disability.

13. During the disciplinary process, on 19 June 2019, Ms Creasey spoke to the claimant and asked for a copy of the report on her dyslexia. The claimant refused to provide the report. It was decided in preparing for the disciplinary hearing that some materials should be obtained in respect of dyslexia. Ms Creasey obtained material from the NHS website including a NHS dyslexia overview which contained material that was relevant to dyslexia in both children and adults. The entire pack was provided for the disciplinary process and was sent to the claimant prior to the disciplinary hearing. The claimant contended that the respondent in providing this information had treated her like a child.

14. The disciplinary hearing took place on 1 July 2019. The hearing was adjourned by letter of 2 July 2019. The person conducting the meeting, Andrew Seaman, National Director of Quantity Surveying, had by 1 July 2019 formed a view that it was likely that dismissal would be the only option, although the employment tribunal concluded that he had not finalised that determination, paragraphs 163 and 164. The Claimant, prior to receiving the outcome of the disciplinary process,

resigned by email sent on 21 July 2019.

15. The claimant brought a claim in the employment tribunal. The employment tribunal set out the issues in some detail from paragraph 6. The employment tribunal set out a large number of factual allegations, only a limited number of which are relevant for the purposes of this appeal. They are:

- Allegation I, criticising the claimant for the way in which she filed electronic documents and characterising it as a disciplinary charge
- Allegation J, John Sharp criticising the claimant for being constantly on her mobile phone
- Allegation L, HR sending the claimant information on how to recognise dyslexia in children
- Allegation H, raising unjustified disciplinary charges (limited to the above matters raised as Allegations I, J and L)
- Allegation M dismissing or effectively causing the claimant to resign (limited to the above matters raised as Allegations I, J and L)

16. The issues raised in this appeal relate solely to the filing of electronic documents, mobile phone use and provision of information about dyslexia in children.

17. The employment tribunal dealt with the complaints by considering the type of discrimination asserted. The employment tribunal first dealt with knowledge of disability. At paragraph 179, the employment tribunal considered the date by which Mr Sharp had knowledge or constructive knowledge of disability, and in what appears to be a slip, referred to that as being May 2019, but then went on to hold that the relevant date was about 12 June 2019.

18. The employment tribunal then considered direct disability discrimination. In brief, it concluded in respect of the allegation about the claimant's mobile phone use, that Mr Sharp had been justified in raising the concern, that raising a concern about mobile phone use was not detrimental treatment, and it had nothing to do with the claimant's disability but was a response to

her conduct. The employment tribunal noted that the claimant had not offered any explanation for her increased mobile phone use, so it was reasonable for Mr Sharp to refer to it again.

19. In respect of the information pack, the employment tribunal found that including the information from the NHS, including the information about children, was not a detriment in circumstances in which the claimant had refused to provide her dyslexia report. The employment tribunal found that it was unreasonable of the claimant to be upset.

20. The employment tribunal went on to consider discrimination because of something arising in consequence of disability. It rejected the contention that the filing of electronic documents on the claimant's personal drive was something arising in consequence of disability, but held it was a matter of personal preference. The employment tribunal went on to find that even if there had been some link to the claimant's dyslexia the respondent was justified to raise the matter in the disciplinary process. Raising the storage of documents on the claimant's personal drive as a disciplinary charge was found to be a proportionate means of pursuing the legitimate aim of maintaining documents security within the respondent and enabling continuity of work on projects between team members.

21. In respect of mobile phone use, the employment tribunal found that the mobile phone was not something arising in consequence of the claimant's disability. The employment tribunal concluded that the reason for the increased phone use was the claimant's unhappiness about the recruitment process of a new associate. The employment tribunal noted that when the matter had first been raised Mr Sharp had been unaware of the claimant's disability. Even if the mobile phone use was something arising in consequence of disability, raising the issue with the claimant was a proportionate means of achieving the legitimate aim of ensuring that employees were focused on their work and not engaged in excessive phone use.

22. Similarly, the employment tribunal found that instituting the disciplinary charges and the disciplinary process, as complained about at factual items H and M, did not constitute discrimination because of something arising in consequence of disability.

23. In respect of the claim of failure to make reasonable adjustments, the employment tribunal concluded that the claimant was not placed at a significant disadvantage in comparison with non-disabled persons by being required to upload documents to the shared drive rather than maintaining them on her personal drive while working on them and then subsequently uploading them to the shared drive en masse.

24. The employment tribunal also went on to find that if the claimant had been placed at any disadvantage, the respondent did not know and should not have known that was the case. The employment tribunal did not consider there would have been any adjustments that the respondent could reasonably be expected to make.

25. The claimant appeals against that Judgment. The Notice of Appeal was considered pursuant to the sift and allegations 1 to 6 were permitted to proceed without any specific reasons being given. In fact, there are two Ground 6s. The second Ground 6 seems to relate to Ground 7. For the purposes of this appeal, it was accepted by the parties that I should consider Grounds 1 to 7 including, both of the grounds numbered 6.

26. Ground 1 asserts a failure on the part of the employment tribunal to direct itself properly in respect of section 15 of the **Equality Act 2010**. Ground 2 suggests a materially erroneous application of the relevant law in considering filing documents on the local server and the claim of discrimination because of something arising in consequence of disability. Ground 3 asserts that there was a failure to properly address the issue of justification. Ground 4 raises further issues about justification, contending that justification could not be made out and asserts that there had been a failure to enquire as to whether any difficulties faced by the claimant were a consequence of her disability. Ground 5 contests that there was an error of law in dealing with the way in which Mr Sharp had raised concerns about the claimant using her mobile phone excessively; it being asserted that his enquiries should have been found to be discriminatory. The first Ground 6 contends that the employment tribunal erred in its approach to any substantial disadvantage suffered by the claimant by application of a PCP requiring documents to be stored on the main server. The second Ground 6

and Ground 7 assert that direct discrimination should have been established in relation to including information in the hearing pack about dyslexia in children.

27. As is often the case, this appeal has involved a focus on a relatively limited part of a lengthy judgment dealing with a very large number of complaints.

28. The approach that the Employment Appeal Tribunal ("EAT") should adopt when considering decisions of the employment tribunal is well established. The requirement for the employment tribunal to give reasons is set out in Rule 62 of the **Employment Tribunal Rules 2013**. Rule 62(5) sets out the areas that should be covered in substantive judgments:

> In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues...

29. Rule 65(2) should be read in conjunction with Rule 2 that sets out the overriding objective. In particular, dealing with cases in ways that are proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility, avoiding delay so far as is compatible with proper consideration of the issues and saving expense. The employment tribunal is to give effect to the overriding objective in interpreting or exercising all of its powers.

30. An important aspect of the overriding objective is the interests of justice, not just between the parties, but also to litigants in the employment tribunal as a whole, and ensuring that cases receive an appropriate amount of the limited resources of the employment tribunal so as to ensure that all litigants have a fair opportunity to have their cases heard.

31. The fundamental aspect of a fair hearing is that a case is considered by an impartial tribunal, at an open hearing, at which the party has a fair opportunity to put forward their evidence and arguments, that the tribunal reach a decision by making findings of fact on the evidence it has heard and that the decision is one that is open to it on a proper application of law and the reasons given are sufficient to understand why the parties have won or lost the relevant claims.

32. There has been a tendency as the years have gone by for claims in the employment tribunal

to cover an ever-increasing range of factual matters resulting in ever longer judgments. The employment tribunal has limited time. As Pascal said in 1657of a letter he had written, he had made it longer than usual because he had not the time to make it shorter. Concision is something to be recommended and it is important that the employment tribunal seeks to be clear and concise in its judgments and to keep them to a reasonable length, as best they can, considering the competing demands on their time.

33. It is in that context that well known authorities have long emphasised the importance of reading employment tribunal judgments fairly and in their entirety. As Mummery LJ put it in **Brent London Borough Council v Fuller** [2011] ICR 806 at 813:

> The reading of an Employment Tribunal decision must not be so fussy that it produces pernickety critiques, over analysis of the reasoning process, being hypercritical of the way in which a decision is written, focusing too much on particular passages or turns of phrase to the neglect of the decision read in the round. These are all appellate weaknesses to be avoided.

34. In the context of the requirements of Rule 62(5) **ET Rules** Bean LJ in **Dray Simpson v Cantor Fitzgerald Europe** [2020] EWCA Civ 1601 noted that the requirement should be considered as a matter of substance and noted the tendency for there to be extensive quotation of law in the age of the word processor that may not be relevant to the particular case:

> 29. Failure by an ET to set out even a brief summary of the relevant law is a breach of Rule 62(5) of the ET Rules. But I do not think it is a profitable discussion to consider whether it is an error of law, nor whether there has been "substantial compliance" with Rule 62(5). It is an error, but the real question in my view is whether the error is material. That is surely what Morison P meant when he said in Kellaway that it does not "amount to an automatic ground of appeal."
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> 30. It has become conventional (and has been made much easier since the invention of word processing) for employment tribunals to include in their decisions the relevant statute law and a summary of what is established by the leading authorities on the relevant subject. But, just as a dutiful recital of the relevant law does not immunise the decision against arguments that the tribunal has erred in its application, so a failure to set out the relevant law does not necessarily mean that there is any substantive error in the tribunal's decision or in the reasoning which leads to that decision, although it does make it more likely that there will be a challenge to the judgment.

35. In **DPP Law Limited v Greenberg** [2021] IRLR 1016 it was specifically noted that where

there is a proper direction as to the law, the EAT should be slow to assume that the employment tribunal has failed to apply that direction to the facts it has found.

36. It is worth considering how the employment tribunal goes about reaching its judgment. The employment tribunal often has very large amounts of factual material before it. During the course of its deliberations, it will necessarily consider the detailed facts. Some, or many, of the facts may be determined to be irrelevant to the issues during the course of deliberation. The employment tribunal will direct itself as to law, but again may find that some parts of that direction are not relevant to the decision that it takes. Rule 62(5) **ET** Rules refers to the direction being succinct and as to the "relevant" law.

37. The authorities often set out a number of questions that applying a statutory provision may give rise to. That is to encourage structured decision making, but it does not mean that where the answer to one of those questions determines the matter it is necessary to go on to answer the other questions which have become unnecessary to determine the dispute.

38. Providing clear and concise reasons involves focusing on the key issues and setting out the determinations in respect of them. It is helpful if a judgment sets out only the law relevant to the issues it found to be of importance, rather than including boilerplate analysis that is irrelevant to the decision it made. Sometimes the answer to one of the questions that arise in the analysis of a statutory provision may mean that it is not possible to give a full answer to other questions because the answer to the former renders the latter inapplicable. On occasion an employment tribunal may briefly state how they would have dealt with a question that did not arise because of its answer to an earlier question, so that the possible alternative reasoning is set out. But, for example, there is a limit to what an employment tribunal can say about justification if detrimental treatment has not been established.

39. It is also worth noting that while judgments are set out in a structured format the process of deliberation is often iterative. During deliberations the employment tribunal will come to focus on the core issues. The judgment and the reasons are designed to show the outcome rather than the

totality of the thought processes of the employment tribunal. The employment tribunal should explain why it reached its final decisions.

40. This appeal can best be analysed by looking at the specific factual allegations and the approach that the employment tribunal took in respect of each of them, including the relevant Grounds of Appeal in those respects.

41. Both parties in this appeal dealt with the Grounds of Appeal in reverse order.

42. The parties started by dealing with the direct discrimination claim in respect of the inclusion in the pack for the disciplinary hearing of NHS material that included information about dyslexia in children. At paragraph 206 the employment tribunal found that this was not a detriment. They accepted that the claimant was unhappy, but did not accept that this could reasonably be seen as being detrimental. The employment tribunal had directed itself, at paragraph 186, to **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2001] IRLR 520 and the analysis that a detriment will be established if a worker in the claimant's position would or might consider the treatment to be to their disadvantage in the circumstances in which they thereafter have to work.

43. The finding that the treatment was not detrimental was open to the employment tribunal on the facts before it. I do not accept that there is any requirement on the employment tribunal, if it concludes there is no detriment, to go on to consider less favourable treatment and whether it was because of the protected characteristic. Where the answer to one question determines a claim, it is legitimate for the employment tribunal to assess the matter on that basis. But in any event, on a fair reading of the employment tribunal's decision, it did go on to consider the next stage because it stated that the treatment i.e. the inclusion of material about children with dyslexia in the pack, was not because of the claimant's disability in the relevant sense, it was included because she had not provided any medical evidence about her dyslexia and the effects that were specific to her. It is permissible for a tribunal to go directly to the reason why question. I can see no error of law in the approach that the tribunal adopted in this regard.

44. The next issue of direct discrimination related to the issue of mobile phone use being raised

by Mr Sharp. This was dealt with at paragraph 204. The employment tribunal had directed itself as to the requirement for less favourable treatment and the reason why test that can be applied in determining whether the treatment is because of disability, at paragraphs 187 through to 189. I can see no error of law in that direction. The employment tribunal had further correctly directed itself at paragraphs 190 and 191 to the burden of proof provisions and the possibility of going straight to the reason why question. The employment tribunal found that raising increased personal mobile phone use with the claimant was not detrimental. That was a finding of fact that was open to the employment tribunal. The employment tribunal stated succinctly that it had nothing to do with disability but was a response to the claimant's conduct. While succinct, I can see no error in the approach adopted by the employment tribunal. On the findings of fact of the employment tribunal overall, there was nothing to suggest that anyone who had also increased their personal mobile phone use, who was not disabled, would have been treated any differently.

45. The issue of the respondent challenging the claimant's increased mobile phone use was again raised as an issue of discrimination because of something arising in consequence of disability. The employment tribunal considered this at paragraph 220. They noted again, it had nothing to do with the Claimant's disability. Together with the factual findings I have set out above, it is clear that the employment tribunal found as a fact that the claimant's increased phone use, which resulted in her being questioned, was not something arising in consequence of disability. The employment tribunal found that she increased mobile phone use because she was unhappy with the recruitment process in respect of a new associate. I can see no error of law in that regard.

46. The employment tribunal went on to hold that in any event, if there was any element of the treatment that was something arising in consequence of disability, challenging the claimant about her excessive mobile phone use was a proportionate means of achieving a legitimate aim in ensuring that employees are focused on their work and not engaged in excessive personal phone use during work hours.

47. The claimant asserts the employment tribunal failed to properly direct itself in law. In

particular, it is suggested that the employment tribunal failed to direct itself pursuant to certain questions set out in **Pnaiser v NHS England** UKEAT/0137/15/LA at paragraph 31:

> In the course of submissions I was referred by counsel to a number of of authorities including IPC Media Ltd v Millar [2013] IRLR 707, Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14/RN and Hall v Chief Constable of West Yorkshire Police [2015] IRLR 893, as indicating the proper approach to determining section 15 claims. There was substantial common ground between the parties. From these authorities, the proper approach can be summarised as follows:
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> (a) The 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 section 15 case. The "something that causes the unfavourable treatment need not be the main or sole reason, but must gave at least a figure (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.
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> (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, contrary to Miss Jeram's submission (for example at paragraph 17 of her skeleton).
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> (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 section 15 of the Act (described comprehensively by Laing J in Hall), the statutory purpose which appears from the wording of section 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 line. 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.
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> (e) For example, in Land Registry v Houghton UKEAT/01049/14 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.
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> (f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.
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> (g) Miss Jeram argued that a subjective approach infects the whole of section 15 by virtue of the requirement of knowledge in section 15(2) so that there must be, as she puts it, discriminatory motivation and the alleged discriminator must know that the something that causes the treatment arises in consequence of disability. She relied on paragraphs 26 to 34 of Weerasinghe as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the 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 of stage involving consideration of whether (as a matter of fact rather than belief) the something was a consequence of the disability.
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> (h) Moreover, the statutory language of section 15(2) makes clear 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 section 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 section 13 and a discrimination arising from disability claim under section 15.
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> (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.

48. In its direction as to the law, the employment tribunal set out a slightly truncated version of the questions set out in **Pnaiser**. The employment tribunal specifically referred to **Pnaiser**. In this case, the fundamental point that the employment tribunal considered was that of whether the increased mobile phone use was something that arose in consequence of disability. It found that it did not, which was a factual finding that was open to the employment tribunal to make.

49. The employment tribunal directed itself as to justification by reference to a number of the relevant authorities. While the way in which the employment tribunal dealt with justification was brief, I do not consider that there was an error of law. In reality, it is a somewhat artificial process to consider justification where it has been held that there was no potentially discriminatory

treatment. If there is no potential discriminatory impact, it is somewhat difficult to carry out a careful balancing of the potentially discriminatory impact on the claimant and the legitimate aim of the respondent. The employment tribunal's judgment may best be read as saying that had it found any potentially discriminatory treatment, it is obvious that it would have been justified. I can see no proper criticism of the employment tribunal for doing so.

50. The treatment of the claimant for saving documents to her personal drive was also asserted to be discrimination because of something arising in consequence of disability. At paragraph 218 the employment tribunal found that this had nothing to do with the claimant's disability. Linked with its other factual findings set out above, it is clear that the employment tribunal concluded that the claimant chose to save documents to her personal drive rather than immediately upload them to the respondent's shared drive as a matter of personal preference, which was not something arising in consequence of her disability. I can see no misdirection in law for the reasons set out above and conclude that this was a factual finding that was open to the employment tribunal. While again, the justification of any possible discriminatory treatment was dealt with briefly in that the employment tribunal merely said it was a proportionate means of achieving a legitimate aim of maintaining staff discipline, that brief comment can be seen in the context of it having already been determined that there was no potentially discriminatory treatment that required justification.

51. It is also asserted that there was an error by the employment tribunal in its approach to the claim for reasonable adjustments. That claim essentially failed on the basis that the provision, criterion or practice of requiring staff to upload files to the respondent's shared drives was one that did not place the claimant at a substantial disadvantage. The employment tribunal had directed itself as to the need to identify the PCP (paragraph 234) and the consideration of whether an adjustment was reasonable. The conclusion that the claimant was not placed at a disadvantage by the PCP, again, was one that was fully open to the employment tribunal.

52. The findings of the employment tribunal in respect of allegation H, instituting the disciplinary process, and M, the eventual hearing of the disciplinary matters and the claimant's

decision to resign before she received an outcome, did not involve any discrimination were determinations that were open to the employment tribunal on the facts it found.

53. In all those circumstances, Grounds 1 through to 7 fail, with the consequence that the appeal shall be dismissed.