Neutral Citation Number: [2024] EAT 78

Case No: EA-2021-000729-AS
EA 2022-000377-AS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 22 May 2024

Before:

HIS HONOUR JUDGE JAMES TAYLER

- -

Between:

MS JESSICA ANDERSON

Appellant

- and –

CAE CREWING SERVICES LIMITED

Respondent

- -
- -

MUKHTIAR SINGH (instructed through direct access) for the **Appellant**
HEATHER PLATT (instructed by Starford Limited) for the **Respondent**

Hearing date: 30 April 2024

- -

JUDGMENT

SUMMARY

DISABILITY DISCRIMINATION

Appeal 1

The Employment Tribunal erred in law in considering whether doctors who undertook fitness to fly examinations acted as agents of the employer for the purpose of section 109 **EQA**. The reasoning in respect of the substantive claims of disability discrimination was incomplete and insufficient. The matter was remitted to a different Employment Tribunal.

Appeal 2

The Employment Tribunal did not err in law in its consideration of whether the complaint was submitted within time. The Employment Tribunal provided insufficient reasoning in respect of specific complaints of discrimination because of something arising in consequence of disability, which were remitted to the same Employment Tribunal for redetermination.

HIS HONOUR JUDGE JAMES TAYLER:

Appeal 1

1. This is an appeal against the judgment of the Employment Tribunal sitting at London South, Employment Judge Martin, sitting with members, after a hearing in 2021 (the dates are not clear from the judgment). The judgment was sent to the parties on 1 June 2021.

2. The first respondent (which I will refer to as the respondent) supplies cabin crew to airlines. The claimant entered a fixed term contract with the respondent on 29 January 2019.

3. Members of cabin crew are required to hold Fit to Fly certificates ("FTFCs"). FTFCs are issued by Aviation Medical Examiners ("AMEs") after a medical assessment. AMEs are approved by the Civil Aviation Authority to carry out the fit to fly ("FTF") assessments. The Employment Tribunal held that:

> AMEs are independent of the Respondent and the CAA, and the assessments are covered by statute and CAA rules.

4. The Employment Tribunal did not make detailed findings of fact about the contractual arrangements between the respondent and the AMEs, or about the relevant statutory and regulatory provisions.

5. The claimant describes herself as having bipolar disorder and a heart condition. In November 2018, the claimant notified the respondent of a recent cardiac episode. She was referred to Dr Watts, an AME. The claimant was examined by Dr Watts on 27 December 2018. The claimant disclosed that she had bipolar disorder in a form that she was required to complete during the assessment process. Dr Watts did not consider he was qualified to assess the claimant in relation to her bipolar condition and advised that she should attend an appointment with a psychiatrist so that the respondent could obtain a report. Dr Watts was not prepared to accept a report from the claimant's GP. The claimant asserted that Dr Watts incorrectly categorised bipolar as a delusional disorder.

6. The claimant arranged a consultation with an alternative AME, Dr Rowley, who issued her with a FTFC. The claimant provided the FTFC to the respondent on 17 January 2019.

7. The respondent decided, because there were two conflicting opinions, that the claimant should

be examined by a third AME, Dr King. Dr King, like Dr Watts, concluded that the claimant should be referred for a psychiatric examination. The claimant asserted that Dr King made inappropriate comments about her bipolar condition.

8. The claimant brought complaints that she had been subject to direct disability discrimination, discrimination because of something arising in consequence of disability and harassment by Dr Watts and Dr King.

Agency

9. The claimant accepted during the course of the Employment Tribunal hearing that Dr Watts and Dr King were not employees of the respondent. She asserted that they were agents for the purposes of section 109 of the **Equality Act 2010** ("**EQA**").

10. The Employment Tribunal held:

> 37. **The Claimant accepts that Dr Watts and Dr King were not employed by the Respondent**. **The question therefore is whether these two doctors were agents of the Respondent**. **If they are agents, then the Respondent will be vicariously liable** for any acts of discrimination by them.
>
> 38. The Claimant's case is that despite them not being employees, Dr Watts was acting as an agent of the Respondent given the extent to which the Respondent was keen to justify and to uphold his opinion. **The Claimant sought to distinguish the *Barclays* case (see below)** as this was not just about Dr Watt's actions, but the way the Respondent adopted them. It was submitted that this was not just about a one-off action of Dr Watts which the Claimant accepts based on the Barclays case could not found liability against the Respondent.
>
> 39. The Claimant's position is that the Respondent did not disclaim the act and seek to assist the Claimant but constantly sought to uphold his opinion and failed to investigate his harassing and discriminatory acts. It was submitted that the Respondent repeatedly said the Claimant could not fly relying on Dr Rowley's certificate, and this was because of the negative outcome from Dr Watts meaning that the Claimant was subjected to his opinion, even though she said the behaviour was harassing and discriminatory. Nothing was specifically said about Dr King in the Claimant's submissions.
>
> 40. **The Respondent submitted that the general rule is that where someone is engaged as an independent contractor on a contract for services that no liability arises for the negligence or other torts committed by that independent contractor** on the execution of the work for which they were engaged. The Respondent referred to *Barclays Bank*

> *Plc v Various Claimants* [2020] UKSC 13 which affirmed the principle in *D&F Estates Ltd, v Church Commissioners for England* [1989] AC 177.
>
> 41. **The Respondent submitted that Dr Watts was not an agent but a selfemployed consultant for Heathrow Medical Services. The Respondent had used this organisation for about 18 assessments since its operations began in 2018**. The relationship was not exclusive or particularly close. The only AME work done by Dr Watts for the Respondent was regarding the Claimant. The Respondent had no input into Dr Watts opinion or decision save to ask for clarification and to ask if the Claimant's GP letter would suffice.
>
> 42. **The Tribunal finds that Dr Watts (and Dr King) were both independent contractors engaged to provide a specific service, namely assessments for FTFC's**. **The Tribunal does not find that there was any agency involved which would render the Respondent liable for any discriminatory acts of Dr Watts or Dr King**.
>
> 43. **The decision in the Barclays case is that "a person would be vicariously liable for the wrongful acts of someone who was not their employee if the relationship between them was sufficiently akin or analogous to employment to make it fair, just and reasonable to impose such liability, but such liability would not arise if the person who had committed the wrongdoing had been carrying on business on his own account**."
>
> 44. **In this case, there is nothing akin to an employment relationship**. **Dr Watts and Dr King were independent doctors with a portfolio of clients and patients**. The Claimant's suggestion that the Respondent constantly sought to uphold Dr Watt's decision is on the evidence wrong. The evidence was that Ms Doran contacted Dr Watts to try to persuade him to accept the Claimant's GP letter rather than have to have a psychiatric report. The evidence was that the Respondent were supporting the Claimant and wanted her to be able to return to work. The Tribunal conclude that it was not for the Respondent to investigate Dr Watts. If the Claimant wanted an investigation or wanted to challenge Dr Watts' decision, she could have contacted the CAA. She could also have complained to the British Medical Association. She did neither.
>
> 45. **The Tribunal does not find that the Respondent is liable for any acts of discrimination that may have been done by either Dr Watts or Dr King**. [emphasis added]

11. The Employment Tribunal recorded as an issue "If so, did the Respondent take all reasonable steps to prevent the AMEs acting unlawfully?" and recorded "Given the finding above, the Tribunal has not considered this." The provision was irrelevant because it was not asserted that Dr Watts or Dr King were employees of the respondent.

The agency appeal

12. The claimant challenges the agency determination on three interrelated grounds:

> Ground 1. The tribunal erred by not considering whether Dr Watts and Dr King, AMEs, were acting as agents of R pursuant to section 109(2) & (3) of the EqA. It was essential to have done so.
>
> Ground 2. The tribunal erred by applying the wrong test in that it applied the test of vicarious liability and not that of agency and principal.
>
> Ground 3. The tribunal conflated the test of vicarious liability with agency and principal.

The law on agency

13. Section 109 **EQA** provides:

> 109 Liability of employers and principals
>
> (1) *Anything done by a person (A) in the course of A's employment must be treated as also done by the employer*.
>
> (2) **Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal**.
>
> (3) **It does not matter whether that thing is done with the employer's or principal's knowledge or approval**.
>
> (4**) In proceedings <u>against A's employer</u>** (B) in respect of anything alleged to have been done by A in the course of A's employment **it is a defence** for B to show that B took all reasonable steps to prevent A—
>
> (a) from doing that thing, or
>
> (b) from doing anything of that description. [emphasis added]

14. The application of section 109 **EQA** gives rise to a number of questions where it is asserted that a respondent ("B") is liable for something ("the act") done by another person ("A"):

14.1. Is A an employee or acting as an agent of B

14.2. If A is an employee of B, is there "vicarious" liability because the act was done in the course of A's employment, whether or not the act was done with B's knowledge or approval

14.3. If so, only if A is an employee, does B have a defence because B took all reasonable steps to stop A from doing that thing etc

14.4. If A is an agent of B, is there liability because the act was done with the authority of B, whether or not the act was done with B's knowledge or approval.

15. The question of whether A is an employee or agent of B is different, although related, to that of whether B is liable for A's acts.

16. It is notable that the "reasonable steps" defence only applies in the case of employees, not agents.

17. The concept of agency for the purposes of the **EQA** is essentially that at common law. In **Ministry of Defence v Kemeh** [2014] ICR 625 Elais LJ said in obiter:

> 38 I am not sure how significant are the differences between the two concepts of agency advanced by the parties in the *Yearwood* case. The concept of agency at common law is not one which can be readily encapsulated in a simple definition. As the editors of *Bowstead & Reynolds* point out, "no-one has the correct use of this or any term". Moreover, Judge Peter Clark appears to have had reservations about the requirement, considered to be an essential part of the definition by the appeal tribunal in the Yearwood case, that an agent must have power to affect the principal's legal relations with third parties. In fact the authors of *Bowstead & Reynolds* (see para 1–04) recognise that someone might quite properly be described as an agent even where this feature is missing. An example is someone who merely introduces or canvasses custom on behalf of the principal without in fact having the power to bind the principal contractually. An estate agent is a typical example. This is not, therefore, an essential element in a common law definition of agency.
>
> 39 Even in the so-called "general concept of agency" advanced in the *Yearwood* case, it would be necessary to show that a person (the agent) is acting on behalf of another (the principal) and with that principal's authority. Once it is recognised that the legal concept does not necessarily involve an obligation to affect the legal relations with third parties, I doubt whether the concepts are materially different.
>
> 40 But ultimately it is not necessary for the purposes of appeal to resolve that question. Whatever the precise scope of the legal concept of agency, and whatever difficulties there may be of applying it in marginal cases, I am satisfied that no question of agency arises in this case.

18. On any view, agency requires that the agent is acting on behalf of the principal, even if there may be an agency where the agent does not have power to affect the principal's legal relations with third parties.

19. In **Unite the Union v Nailard** [2019] ICR 28, Underhill LJ considered section 109 **EQA**. The

issue was whether the principal was liable for the act of the agent, rather than whether there was an agency at all. Underhill LJ stated:

> If, therefore, the effect of the language of s 109(2) is to render a principal liable for the acts of his or her agents done in the course of the performance of their authorised functions, I can see no justification for limiting that liability in the way proposed by Mr Segal. An agent may stand in the shoes of the principal in dealing with A, but if while wearing them he treads on B's toes I see no good reason why he should not be liable to B just as much as if it had been A's toes that were crushed: in both cases the wrong is done in the course of performing the authorised functions. The proposition based on *Bowstead and Reynolds* that it is inherent in the principal/agent relationship that the agent be in a position to affect the principal's legal relationship with third parties is fine as far as it goes[3], but it misses **the point that we are not here considering whether an agency relationship exists at all but with liability in tort for acts done in the course of it.** [emphasis added]

20. Again, the passage makes clear that the principal must have authorised the agent to act.

21. A number of passages of *Bowstead and Reynolds* are of some assistance:

> 1-001 (1) Agency is the fiduciary relationship which exists between two persons, one ofwhom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation. The one on whose behalf the act or acts are to be done is called the principal. The one who is to act is called the agent. Any person other than the principal and the agent may be referred to as a third party.

22. This general definition emphasises that the principal "expressly or impliedly manifests assent that the agent should act on his behalf so as to affect his legal relations with third parties" and vice versa. However, the **EQA** authorities doubt that there is a requirement for the purpose of section 109 that the authority granted by the principal must be to affect his legal relations with third parties.

23. The editors of *Bowstead and Reynolds* note that there is no single definition of agency:

> 1-003 **Limits on definition** But in any case definitions are, however commonplace, of limited utility in law as elsewhere; in particular, reasoning based on presupposed definitions is often suspect. A longer explanation is usually required than can be encapsulated in the definitional form. No one has the monopoly of the "correct" use of this or any other term. The word "agency", to a common lawyer, refers in general to a branch of the law under which one person, the agent, may directly affect the legal relations of another person, the principal, as regards yet other

> persons, called third parties, by acts which the agent is said to have the principal's authority to perform on the principal's behalf and which when done are in some respects treated as the principal's acts. These acts are probably thought of as most likely to occur in connection with the formation and discharge of contracts and in the disposition of property, **but the same idea appears, sometimes in modified form, in many other parts of the law.** [emphasis added]

24. The Employment Tribunal directed itself by reference to **Various Claimants v Barclays Bank plc** [2020] UKSC 13, [2020] A.C. 973 in which a related, but separate, question of whether there was tortious liability at common law for a doctor who carried out pre-employment medical examinations for a bank. The doctor was not an employees of the bank. The analysis of Baroness Hale, with whom the other Justices agreed, left aside "relationships such as agency and partnership". Baroness Hale considered the **Christian Brothers case** [2013] 2 AC 1 and noted that:

> 15. In para 35, Lord Phillips of Worth Matravers listed "a number of policy reasons" usually making it fair, just and reasonable to impose vicarious liability upon an employer for the torts committed by an employee in the course of his employment:
>
> > "(i) the employer is more likely to have the means to compensate the victim than the employee and can be expected to have insured against that liability; (ii) the tort will have been committed as a result of activity being taken by the employee on behalf of the employer; (iii) the employee's activity is likely to be part of the business activity of the employer; (iv) the employer, by employing the employee to carry on the activity will have created the risk of the tort committed by the employee; (v) the employee will, to a greater or lesser degree, have been under the control of the employer."

25. Baroness Hale commented that this analysis had been expanded to situations analogous to employment:

> 17. This may have arisen because of what Lord Phillips said, at para 47:
>
> > "At para 35 above, I have identified those incidents of the relationship between employer and employee that make it fair, just and reasonable to impose vicarious liability on a defendant. Where the defendant and the tortfeasor are not bound by a contract of employment, but their relationship has the same incidents, that relationship can properly give rise to vicarious liability on the ground that it is 'akin to that between an employer and an employee'. That was the approach adopted by the Court of Appeal in *E's case* [2013] QB 722 ."

26. Baroness Hale went on to conclude:

> 27. The question therefore is, as it has always been, whether the tortfeasor is carrying on business on his own account or whether he is in a relationship akin to employment with the defendant. In doubtful cases, the five "incidents" identified by Lord Phillips may be helpful in identifying a relationship which is sufficiently analogous to employment to make it fair, just and reasonable to impose vicarious liability. Although they were enunciated in the context of non-commercial enterprises, they may be relevant in deciding whether workers who may be technically self-employed or agency workers are effectively part and parcel of the employer's business. But the key, as it was in *Christian Brothers* [2013] 2 AC 1 , *Cox* [2016] AC 660 and *Armes* [2018] AC 355 , will usually lie in understanding the details of the relationship. Where it is clear that the tortfeasor is carrying on his own independent business it is not necessary to consider the five incidents.

27. Baroness Hale decided that the Bank was not vicariously liable for the acts of the doctor because he genuinely was an independent contractor, rather than being in a relationship akin to employment.

28. The difficulty with the reliance the Employment Tribunal placed on **Barclays** in this case is that Baroness Hale specifically disavowed any consideration of agency. In the case of agency, certainly in the commercial context, there is nothing unusual in the agent being an independent contractor, and many agents have corporate identity. As the editors of *Bowstead and Reynolds* note (1-034):

> Many agents (e.g. brokers) could be called independent contractors; other independent contractors (e.g. repairers) are unlikely to have agency powers.

29. The editors of *Bowstead and Reynolds* suggest that agency may best be seen, not as a status, but as a description of a person while exercising the authority conferred by the principal to act on the principal's behalf. Thus a person or corporation that is an independent contractor may be an agent while exercising the authority conferred by the principal to act on behalf of the principal.

30. Thus in the context of a doctor carrying out an examination for an airline the question would be that of whether the doctor was acting on behalf of the principal pursuant to authority vested by the principal, as opposed to acting independently; the airline paying for the provision of that independent

service. This is likely to turn on the specifics of the relationship and any statutory or regulatory context within which it occurs. One guide to this assessment might be that of whether the doctors are in reality company doctors (such as might be employed by the respondent), or whether they are truly independent practitioners from whom an expert opinion is sought.

Analysis of the agency grounds of appeal

31. The Employment Tribunal did ask itself the question of whether Dr Watts and Dr King were agents of the respondent. It answered that question by considering whether the respondent would be vicariously liable for their actions because there was a relationship akin to employment. That question was answered in the negative because Dr Watts and Dr King were independent contractors. Regrettably, I have concluded that the Employment Tribunal adopted an incorrect analysis. The question was whether, on a proper application of the test set out in section 109 **EQA**, Dr Watts and Dr King were acting as agents of the respondent and, if so, whether they did so with the authority of the respondent, whether or not the acts complained of were done with the respondent's knowledge or approval. The question of whether they acted as agents was not necessarily answered by determining whether they were independent contractors, although the factors relied on in concluding that there were independent contractors could be highly relevant to the determination of whether they were acting as agents for the respondent. I have considered whether, despite that misdirection, there is, in reality, only one possible answer to the agency question, on the basis of the facts found by the Employment Tribunal. While I consider that some of the features identified by the Employment Tribunal point against agency, I cannot say there is only one possible answer, particularly as there were only limited findings about the contractual arrangements between the respondent and Dr Watts and Dr King and little consideration of the statutory/regulatory context. I have concluded that this matter must be remitted for redetermination. I have sought to set out above an analysis that may assist on remission.

The disability discrimination appeal

32. The Employment Tribunal went on to consider whether Dr Watts and Dr King were guilty of

any disability discrimination for which the respondent could be liable. It is, perhaps, because this was alternative reasoning, that the analysis was not completed. For example, one of the issues was identified as:

> "Did the Respondent miscategorise the Claimant's bi-polar disorder in January 2019 as a psychotic disorder? If so, in so doing, did the Respondent treat the Claimant less favourably than it treated, or would have treated, a colleague who did not have bi-polar disorder?"

33. The answer the Employment Tribunal gave was:

> 47. The Tribunal has found that the Respondent is not liable for the acts of Dr Watts. [set out the delusional point as facts]. However, if the Tribunal had found differently the following would apply. The Tribunal found the following facts in relation to this issue.
>
> 48. The Claimant alleges that Dr Watts categorised her condition as delusional (as opposed to psychotic as set out in the list of issues). This refers to the communication by email from Dr Watts dated [ ] in which he said [ ]. The Tribunal notes that the words "delusional" are in quotes. Expand on this. [ ]. The less favourable treatment complained of is the categorising of her bi-polar disorder as delusional.

34. The overlapping grounds of appeal assert:

> Ground 4: There were serious procedural irregularities in that the tribunal's reasons in relation to the Claimant's allegations were incomplete and presented in draft form as apparent from paragraphs 47 to 55 of the judgment.
>
> Ground 5: Further, or alternatively, the tribunal failed to set out adequate reasons and conclusions.
>
> Ground 6: Further, or alternatively, the tribunal relied upon its findings on vicariously liability to reach its conclusions

35. The reasoning is in draft form and no conclusion is reached. While the above is the starkest example, there are a number of other passages in which the reasoning is not concluded. Paragraph 49 concludes "Even had the Respondent been vicariously liable for the acts of Dr Watts and Dr King, the Claimant's claim would f". While "f" is likely to be fail, the subsidiary parts of the judgment that deals with the discrimination claims should the Employment Tribunal be wrong about the agency issue, are so lacking that the claimant can only reasonably conclude they are a draft and that the decision process was not concluded. In those circumstance, I consider this part of the judgment is unsafe and the appeal mut be allowed.

Disposal of Appeal 1

36. The claim is remitted for redetermination. I have concluded that the remission should be to a new Employment Tribunal. I do not consider there would be a very substantial saving of costs or time in remitting to the same Employment Tribunal. I also consider that the failure to complete the judgment is such that the claimant will have greater confidence in the process if there is a rehearing before a new Employment Tribunal. While I appreciate the delay is unfortunate, many of the findings were incomplete and must be determined again. Further findings of fact will be required as to the precise relationship between the AMEs and the respondent. If there is difficulty in securing the attendance of the AMEs the respondent should consider seeking witness orders.

Appeal 2

37. This appeal challenges a judgment of Employment Judge Anstis, sitting with members, after a hearing from 3-6 May 2022. The judgment was sent to the parties on 16 June 2022 together with written reasons.

The time appeal

38. The Employment Tribunal held that a number of asserted acts of disability discrimination were out of time. The acts were:

38.1. questioning the claimant's request for reasonable adjustments during an interview for promotion in July/August 2019 (direct disability discrimination)

38.2. indirect disability discrimination based on a PCP pf wearing uniform to a work related event which included a requirement to wear high heels (this relates to the claimant’s heart condition)

38.3. telling the claimant that she was incapable of doing her job for not being able to wear high heeled shoes and a blazer in a hot working environment? (section 15 – this relates to the claimant’s heart condition)

38.4. mocking and humiliating her for being overweight (section 15 – the claimant asserted that her medication for bipolar affective disorder caused weight gain)

38.5. repeatedly shouting at the claimant for not wearing uniform-standard shoes (this relates to the claimant's heart condition)

38.6. telling the claimant that her inability to wear high heels made her incapable of doing her job (this relates to the claimant's heart condition)

38.7. humiliating her in front of colleagues and passengers for not wearing high heels and removing her blazer when she over-heated (this relates to the claimant's heart condition)

38.8. being subjected to online abuse by colleagues (this relates to the claimant's heart condition)

39. The claimant's allegations were made against a number of colleagues. The respondent asserts that the claimant did not plead or adduce any evidence that any of those accused of discrimination actually knew about her diagnosis of bipolar affective disorder.

40. The claimant raises the following ground of appeal:

> Ground 1: The Tribunal erred in its approach to the question of whether the Claimant's claim was in time because it failed to consider, adequately or at all, whether there was merit in the contention advanced by the Claimant: that the respondent's attitude to her had changed following its knowledge of her diagnosis with bipolar affective disorder

41. Mr Singh contended that the Employment Tribunal should have determined as a matter of fact whether the respondent's attitude changed to the claimant following notification of her bipolar condition as this could have resulted in a conclusion that there was conduct extending over a period for the purposes of section 123(3) **EQA**. Mr Singh noted that in **Worcestershire Health and Care NHS Trust v Allen** [2024] EAT 40 I expressed the view that there could be conduct extending over a period where the conduct involves different protected characteristics, types of discrimination and/or people:

> 13. The respondent submitted that conduct extending over a period must as a matter of law all relate to the same protected characteristic. I am not persuaded by that argument. For example, if a person took against a woman because of her race and sex and demonstrated this by sometimes making comments that were sexist, sometimes racist and sometimes both racist and sexist; I can see nothing in the language of the relevant

> provisions that would prevent the entire course of the racist and sexist behaviour constituting conduct extending over a period. Similarly, I cannot see any reason why conduct extending over a period cannot involve a number of different types of prohibited conduct, such as a mixture of harassment and direct discrimination. It may be more difficult to establish that there has been discriminatory conduct extending over a period where the acts that are said to be linked relate to different protected characteristics and different types of prohibited conduct, but there is no absolute bar that prevents there being conduct extending over a period in such circumstances.

42. I also noted the more disparate the treatment the more difficult it will be to establish that it constitutes conduct extending over a period.

43. In this case, not only were there different types of disability discrimination, involving different people, there was nothing to suggest that they knew of the claimant's bipolar condition. The vast majority of the conduct was said to relate to the claimant's heart condition. I do not consider that there was any error of law in the analysis of the Employment Tribunal. The issue of a change of attitude after the respondent became aware of the claimant's bipolar condition was only raised to a limited extent before the Employment Tribunal, being developed mainly in closing submissions.

44. The next ground of appeal is:

> Ground 2. Further, or alternatively, the Tribunal erred by relying upon the conclusions of the Respondent's internal investigations in respect of the Claimant's complaints of discrimination and failed to determine disputed issues relevant to her claim of discrimination and her factual assertions.

45. Mr Singh frankly accepted that he was not sure how this ground of appeal came about. He suggested that it might relate to paragraph 65 of the judgment that notes the respondent's closing submission that referred to the respondent's reasons for taking disciplinary action against the claimant. The assertion appears to be that this involved accepting the submission without making the necessary findings of fact. There is also an assertion that the Employment Tribunal failed to grapple with the evidence and make necessary findings of fact. I am not persuaded that the Employment Tribunal failed to grapple with the evidence or that any error of law has been established in the reasoning or reasons provided by the Employment Tribunal.

46. The final ground of appeal asserts:

> Ground 3. In respect of the allegation which was in time (initiating disciplinary proceedings and the final written warning) the Tribunal did not properly consider whether those actions amounted to unfavourable treatment because of something arising in consequence of the Claimant's disability contrary to s.15 EqA 2010, alternatively, the Tribunal's reasoning set out in paragraphs 62 and 50-58 are inadequate in that regard.

47. The reasoning of the Employment Tribunal is a little opaque. It is not clear that the Employment Tribunal determined for each absence that was taken into account in initiating disciplinary proceedings and issuing a final written warning, whether the absence was something arising in consequence of disability, particularly in respect of the absences on 10 and 26 January 2020.

48. I do not consider there is any merit in this allegation in respect of the assertion that the claimant was forced to resign, because the Employment Tribunal rejected the constructive dismissal complaint, in part because:

> 58. Finally, we conclude based on her own evidence that the claimant did not resign in response to any breach of contract. Instead she resigned because she considered that would be financially beneficial to her when compared with being dismissed or made redundant.

49. The Employment Tribunal rejected the contention that the claimant was forced to resign.

50. The complaints in respect of which I consider the reasoning is insufficient are the claims of detriment by way of initiating disciplinary proceedings and issuing a final written warning. This was asserted to be discrimination because of something arising in consequence of disability. Those two complaints will be remitted for redetermination by the same Employment Tribunal which will require consideration in respect of each absence that was taken into account, in initiating disciplinary proceedings and issuing the final written warning, whether it arose in consequence of disability and, if so, whether the action taken by the respondent was a proportionate means of achieving a legitimate aim. I consider that the complaints that are to be remitted are a minor part of the claim and, in circumstances in which the vast majority of the reasoning of the Employment Tribunal has not been successfully challenged, it is proportionate that the remission be to the same Employment Tribunal.