EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Ms J Latham	**v**	CSC Computer Sciences Ltd

Heard at: Reading **On:** 3 and 4 September 2018, and 5 September 2018 (in Chambers)

Before: Employment Judge S Jenkins
Members: Mrs J Wood and Mrs F Betts

Appearances
For the Claimant: Ms L Badham of Counsel
For the Respondent: Mr J Dawson of Counsel

RESERVED JUDGMENT

The Claimant was not unfairly dismissed or discriminated against on the ground of disability and all her claims are dismissed.

REASONS

BACKGROUND

1. The claims before the Tribunal were for unfair dismissal and for discrimination relating to disability; namely direct discrimination, discrimination arising from disability and a failure to make reasonable adjustments. We heard evidence from the Claimant on her own behalf and from the Claimant's manager, Mr Peter Lawrence, the Respondent's Global Quality Assurance Director, on behalf of the Respondent. We also considered those documents within the bundle spanning 562 pages to which our attention was drawn by the parties.

PRELIMINARY ISSUE

2. In its response, the Respondent had initially accepted that the Claimant was disabled for the purposes of the Equality Act 2010 ("Act"), and that was confirmed by the Respondent at a case management hearing before Employment Judge Hawksworth on 12 December 2017. However, Judge

Hawksworth's directions following that hearing included a direction for disclosure of the Claimant's medical notes which took place in March and April 2018. That led the Respondent to make an application on 2 May 2018 to amend its response to deny that the Claimant was a disabled person at all material times. That application was considered by Employment Judge Gumbiti-Zimuto and his order granting that amendment was sent to the parties on 30 August 2018.

3. At the commencement of this hearing, Ms Badham, on behalf of the Claimant, made an application for that order to be varied or set aside pursuant to rule 29 of the Employment Tribunals Rules of Procedure on the basis that it was in the interests of justice for that to occur. She based her application on what she contended had been a misstatement by the Respondent in its application, namely that it only formed the view that the Claimant was potentially not disabled after disclosure of medical evidence when the Respondent had had information regarding the Claimant's medical condition during the course of her employment. She contended that the Employment Appeal Tribunal (EAT) decision in Serco v Wells [2016] ICR 769 supported her application.

4. Mr Dawson on behalf of the Respondent resisted the application, noting that although the EAT in Serco had indicated that there were certain circumstances in which an order of an earlier tribunal could be set aside, which included where there had been a misstatement of fact or law, the EAT had also noted that finality of litigation was important. He also contended that whilst the Respondent had had some evidence regarding the Claimant's health during her employment, it had not seen her medical notes which formed part of her disclosure.

DECISION ON PRELIMINARY ISSUE

5. Having considered the representations of the parties, we noted that whilst the Respondent had had some information regarding the Claimant's medical condition during her employment, that had only been in the form of reports of consultations between the Claimant and a rehabilitation consultant, as discussed further below. The Respondent only had access to the Claimant's medical records following disclosure. We also noted that Judge Gumbiti-Zimuto had dealt with all the representations made by the Claimant in relation to the Respondent's application to amend when making his order. We therefore did not consider that it was in the interests of justice to vary it or to set it aside.

ISSUES AND LAW

6. The issues to be considered in this case had been set out by Judge Hawksworth in her case management summary following the hearing on 12 December 2017. In addition to those however, we were conscious that we would have to deal with the issue of whether the Claimant was a disabled person for the purposes of the Equality Act 2010 at all material times. Subsequent to that preliminary hearing, the Claimant was directed to provide further information regarding her claims for direct discrimination

and failure to make reasonable adjustments, which she did, and the issues for us to consider in light of that were as follows:-

Disability

6.1 Was the Claimant a disabled person for the purposes of section 6 of the Equality Act 2010 at all material times, namely did she have a physical impairment which had a substantial and long term adverse effect on her ability to carry out normal day to day activities?

Direct discrimination

6.2 Did the Respondent treat the Claimant less favourably than it would have treated a hypothetical comparator with the same characteristics, other than her disability, as the Claimant because of her disability? Specifically, this covered the following areas:-

(a) The transfer of the Claimant's people management role to a colleague in August 2016;

(b) The publication of a new organisational chart showing the Claimant in her previous role and with her colleague undertaking her role with management responsibilities;

(c) Failing to provide the Claimant with additional workload when requested in November 2016;

(d) Failure to provide the Claimant with a more challenging workload from January 2017;

(e) Comments made by the Claimant's manager about her in an annual appraisal undertaken in February 2017.

Discrimination arising from disability

6.3 Did the Respondent treat the Claimant unfavourably by "something arising in consequence of her disability"? The specific points raised by the Claimant were that her time off work due to her disability led to the Respondent altering her work allocation, selecting her for redundancy and ultimately dismissing her. If it was concluded that the Respondent had treated the Claimant unfavourably in one or more of those ways arising in consequence of a disability, we would then need to consider whether the Respondent could show that its treatment of the Claimant was a proportionate means of achieving a legitimate aim.

Failure to make reasonable adjustments

6.4 Did the Respondent operate a provision, criterion or practice ("PCP"), of not obtaining additional medical assessments to determine the eligibility of disabled staff to increase their workloads

and/or when assessing staff during the redundancy process without taking into account the individual's disability? If it was concluded that either of those had occurred, then we would need to consider whether any such PCP placed the Claimant at a substantial disadvantage compared to non-disabled people, if so, we would then need to consider whether the Respondent had taken such steps as were reasonable to try to avoid any such disadvantage?

Unfair dismissal

6.5 The Claimant contended that she had been unfairly dismissed for the purposes of section 98(4) of the Employment Rights Act 1996 on the basis that the Respondent had failed to carry out a fair procedure in that it had not searched for alternatives to redundancy or for any alternative role for her.

Time/limitation issues

6.6 With regard to the Claimant's discrimination claims, we needed to consider whether any alleged act or omission took place prior to the period of three months less one day (as extended by early conciliation) before the claim was presented or whether any such act or omission formed part of conduct extending over a period with the last act or omission in that period taking place within time. If it was considered that any act or omission had taken place out of time then we would need to consider whether the Claimant's claim had been presented within such other period as we considered just and equitable.

Remedy

6.7 Judge Hawksworth's case management summary had indicated that our hearing would focus on liability and would only identify issues relevant to remedy. In the event, we decided that we would confine ourselves to consideration of liability in this hearing with the matter of remedy being left to further consideration if required.

FINDINGS

7. Our findings in relation to the matters relevant for our deliberations are set out below, and where we have preferred one version of events to another we have done so on the balance of probabilities. In that regard, we drew particular strength from the contemporaneous documentation contained within the bundle.

8. The Respondent is a global company providing IT services. It is now, following a merger in April 2017, part of a listed company known as DXC Technology.

9. The Claimant transferred to the Respondent under the Transfer of Undertakings (Protection of Employment) Regulations 2006 in February 1994, although her continuous service went back to July 1990. In the recent past, the Claimant had worked as a Quality Manager based at her home, working a full time 37.5 hour week but compacted over four days. Whilst the Claimant had managed staff in the past, in the period up to August 2015 she did not manage staff and was classed by the Respondent as an "Individual Contributor". In June 2015, the Claimant moved to undertake a role of Quality Support for New Business and Sales Support, and then, in August 2015, she was asked to undertake a role of Regions, Accounts, Support Services and Transitions Quality Manager (we refer to this as the "Regions" role). This was a more responsible role including responsibility for management of some 25 staff, all working remotely.

10. Discussions about that role took place between the Claimant and her line manager, Mr Lawrence, and the Claimant commenced that role in September 2015. However, due to what appeared to be an extremely involved promotion process. which restricted promotions, other than in exceptional circumstances, to the next "cycle", which was April of each year, the Claimant was not formally appointed into this role. Mr Lawrence's evidence was that the role was only given to the Claimant as an assignment and it would then be up to her to show her ability to undertake the role following which her promotion would be confirmed. He was however clear that he felt that the Claimant was capable of undertaking that role and was confident that she would indeed be promoted.

11. The Claimant's evidence was that she had in fact been appointed to the role and was merely waiting for the administrative process to be followed such that her promotion could be confirmed at the next "cycle". In the event, this was not a relevant issue on which we needed to draw conclusions but we nevertheless noted that the Claimant was undertaking this role in December 2015, and we saw no reason why that would have changed, if not for the subsequent events noted below. In our view, even if not formally appointed to it, the Regions role was the one being undertaken by the Claimant at that time, on an indefinite basis.

12. December 2015, or more specifically 27 December 2015, was a significant date in that it was on that date that the Claimant experienced severe back pain which was, in February 2016, diagnosed as lumbar spine disc degeneration and moderate disc bulge. At that time, the condition had a significant impact on the Claimant's day to day life and the Claimant was signed off work from that point through to May 2016.

13. Over time, and whilst the condition is degenerative and therefore not going to improve, and there is no surgical ability to rectify it, the Claimant's condition improved. She attended physiotherapy sessions and learned techniques for managing any pain she might experience.

14. The Respondent had a contract with its insurer, Unum, to provide a rehabilitation service for its staff and a Vocational Rehabilitation Consultant

("VRC") was allocated to advise in relation to the Claimant. The first telephone consultation with the VRC took place in April 2016 and they proceeded at slightly shorter than monthly intervals through to 13 September 2016 when the final report was produced; in total six reports were produced. The Claimant also underwent a workplace assessment by Nuffield Health on 26 April 2016 which recommended that a specific chair, desk and screen be provided to her, with that equipment being supplied in June and July 2016.

15. Following the provision of that equipment, the Claimant commenced a gradual return to work on 27 June 2016. Initially, this was for two hours per day, which the Claimant accomplished in two blocks of one hour, with a gradual increase being planned to move to the full nine hours per day from 15 August 2018. In the event, that return to full time hours did not occur as quickly as anticipated but that was not due to the Claimant's back problems.

16. What did impact on the Claimant's ability to return was the diagnosis of her partner with a cancerous tumour in July which needed significant and intensive treatment. Shortly after that, the Claimant's partner was also diagnosed with prostate cancer which also required treatment, which included two stages of chemotherapy.

17. The Claimant informed Mr Lawrence about her partner's situation in July 2016 and there was some email communication between them during the remainder of the year. From that, it seemed clear that Mr Lawrence's direction to the Claimant was that she should focus on her partner's health and not undertake time-critical or business-critical tasks. In the event, whilst the Claimant continued to undertake partial duties for the Respondent, she did not return to full time working until November 2016.

18. Initially during her absence, the Claimant's role had been undertaken by other employees of the Respondent, seemingly on an ad hoc basis, but in August 2016, Mr Lawrence decided to allocate the Regions role to one of the Claimant's colleagues, John Bradshaw. This was due to the fact that the Claimant's ability to undertake managerial responsibilities would be limited by her need to support her partner during this period on the basis that aspects of her role, particularly those involving people management, might require urgent and critical intervention.

19. That was discussed with the Claimant; indeed the VRC report on 13 September 2016 noted that the Claimant would *"not resume any managerial responsibilities at this time but that Pete [Mr Lawrence] will continue to assign tasks that allow for more flexibility until such a time that [Mrs Latham's] home situation is more stable"*.

20. An organisation chart of the Quality Assurance area was then produced in September 2017 which showed Mr Bradbury as undertaking that managerial role and with the Claimant's role being recorded as "Obligations, Bids and Sales". This was also recorded as an Individual Contributor position.

21. The evidence of both witnesses was that the Respondent was an organisation which underwent change on a regular basis. However, the period from the end of 2016 was a time of particular difficulty for the Respondent and, in November 2016, Mr Lawrence became aware of a possible merger of the Respondent with Hewlett Packard and that there would be a need for redundancies surrounding that. That then progressed in the early part of 2017 as we indicate further below.

22. In November 2016, the Claimant contacted the Respondent about increasing her workload but it was agreed between the Claimant and Mr Lawrence that that would take place at the start of 2017. That is confirmed by an email that month from the Claimant to one of the Respondent's HR managers noting that she had asked Mr Lawrence for a "*more challenging workload in January*" and also by an email from Mr Lawrence to the same HR manager noting that, in light of the further round of chemotherapy to be undertaken by the Claimant's partner, he was "*trying to keep the load light up to the Christmas break*". He went on to say that the plan was to "*up the workload*" from that point. The Claimant in any event took most of December as annual leave, having built up a significant amount of outstanding leave during her sickness absence which needed to be taken by the end of the calendar year.

23. A discussion took place between the Claimant and Mr Lawrence at the end of November indicating that the Claimant could take over the "SOC1" programme from a colleague who was understood to be taking voluntary redundancy, although it appeared that, almost immediately, that colleague confirmed that he was not taking voluntary redundancy. Nevertheless, in the new year of 2017, in light of the Respondent's uncertain situation and the imminent redundancies, Mr Lawrence considered that it would be beneficial for the Claimant to provide support to the other manager in the SOC1 programme and he therefore directed the Claimant to develop her knowledge in the area so that she could support that work later in the year. Mr Lawrence's evidence, which was not challenged and which we therefore accepted, was that the work in that SOC1 area operated in cycles, with the heaviest work being undertaken between April to October in each year; followed by a quiet period in November and December, followed by a further period of planning in the January to March period before the next cycle of work commenced in April. The Claimant's focus in January and February 2017 was therefore on this SOC1 area although it was work which largely involved her development of her understanding of the area and in planning, as the next cycle had not commenced.

24. By the start of 2017, however, the restructure and consequent redundancies were being discussed and the Respondent commenced consultation with trade unions and employee representatives. With regard to the Quality Assurance area, it was initially felt that four out of the nine managers at the Claimant's level would be made redundant, although this ultimately ended up as eight out of nine. Announcements regarding the restructure and redundancies were undertaken in February 2017 and Mr

Lawrence undertook a selection exercise of the nine managers against various criteria at that time.

25. Mr Lawrence's initial marking of the Claimant was at a level of 66 out of a score of 100 which put her in the affected group. A consultation meeting took place with the Claimant on 16 March 2017, during which she raised some concerns around her scores, suggesting that they were too low and that additional marks should be awarded which would leave her with a total score of 74. In the event, whilst Mr Lawrence agreed with some of the Claimant's points, he did not agree with all of them and revised her score to 72.

26. Ultimately, only one employee with a score of 78 remained with the Respondent following the redundancy exercise, although two of the employees scored more highly and we understood that they decided to leave the Respondent's employment voluntarily.

27. During the consultation period which included a further meeting on 4 April 2017 and then a final meeting on 11 May 2017, in addition to raising concerns over her scores, the Claimant also raised concerns over the timing of the initial consultation with her and over a lack of discussion with her of possible alternative employment. Nothing turned on the former point but we found that the Claimant was given notice of all vacancies within the Respondent's organisation after her redundancy was confirmed on 11 May 2017 albeit, as the Claimant herself accepted, nothing suitable was available for her.

28. The Claimant's redundancy was confirmed at the meeting on 11 May 2017 and she was issued with a formal letter of confirmation on 23 May 2017 nothing that she would spend her notice period on garden leave and that her employment would formally end on 10 August 2017. The Respondent in fact agreed with a request of the Claimant at this point that she would not leave immediately with a payment in lieu of notice but would remain employed in order to maintain private medical cover for her partner and also to gain the benefit of a slightly higher redundancy payment. The Claimant was notified of her right of appeal in this letter but did not take up that right.

29. Notwithstanding the redundancy exercise that was taking place at the time, the Claimant's annual review with Mr Lawrence took place in February 2017 and a copy of the review report dated 21 March 2017 was before us. The Claimant in her claim took issue with some of the comments made by Mr Lawrence in this record suggesting that he was making inappropriate assumptions about her ability, particularly her physical ability. However, having read the review report, we could not share the Claimant's concerns.

30. Whilst the report did refer to the Claimant's health problems (which we considered entirely appropriate bearing in mind that the Claimant had spent most of the first half of 2016 absent due to her back condition), the review also referenced the Claimant's personal problems and challenges,

i.e. the issues arising from her partner's illnesses. Even though both the Claimant's own health problems and those of her partner were referenced within the review, we did not read Mr Lawrence's comments as anything other than positive and complimentary. Where there was reference to the Claimant's sick leave or the personal problems experienced due to her partner's illness, they were always followed by confirmation that despite those matters, the Claimant had continued to perform well and to be committed to undertaking her tasks at all times.

31. Returning to the Claimant's medical situation, she did not consult her GP regarding her back complaint beyond a consultation on 1 September 2016. That consultation noted that the Claimant had completed a questionnaire which noted that she had spent three hours or more in the previous week on physical exercise, had spent between one hour and three hours in the previous week walking, had spent more than three hours on housework/childcare and had spent three hours or more in the previous week undertaking gardening/DIY. It was recorded also that the questionnaire indicated that the Claimant's usual level of walking pace was "brisk" and that her physical activity index was "active".

32. Whilst the Claimant had been prescribed painkillers prior to this point, she confirmed that she stopped taking prescription medication but would take over the counter painkillers as and when needed to minimise her pain. The Claimant was not seen by any medical consultant after that point but did continue with her physiotherapy. The notes of those physiotherapy sessions do not however indicate that there was any recurring concern in the form of any "relapse" of the Claimant in relation to her back condition. The Claimant's entitlement under the Respondent's group income protection with Unum also ceased at the end of September 2016 although we note that payment under that scheme was by reference to the individual's ability to undertake her job and did not consider the Claimant's health more generally so the fact of its withdrawal was of little relevance.

33. The Claimant's evidence regarding the impact of her condition on her life was that she now avoids adventure and activity holidays and activities such as hillwalking. She can only sit for some two hours at a time (although we observed that on one occasion in the hearing she did sit for slightly longer than that), has to plan breaks when driving long distances, and sits in an aisle seat when flying so that she can stand up and move around. The Claimant confirmed that she is mobile and can manage the majority of her daily tasks unassisted although she is slower to complete such tasks.

34. In her witness statement, the Claimant confirmed that she struggles to carry washing up and down stairs, which she clarified involved difficulty in carrying a basket of washing which led her to carry smaller items. She confirmed that she employs a cleaner and also a gardener who undertakes heavy gardening tasks for her. In her evidence under cross-examination, the Claimant confirmed that she could carry bags of shopping but balanced them so that she had one in each hand as carrying one in one hand was difficult. We noted however that the particular comment about

shopping in her witness statement was that she could "no longer carry bags of shopping as [she] used to".

CONCLUSIONS

35. With regard to the first issue, of disability, we were mindful of the Respondent's case that the medical evidence did not indicate that the Claimant underwent any, or certainly any significant, medical intervention in relation to her back complaint beyond 1 September 2017. Bearing in mind that the onset of the Claimant's back condition took place in December 2015, notwithstanding that the condition had a very severe impact on the Claimant in early part of 2016, the Respondent contended that it did not have the required long term (i.e. lasting for 12 months) effect on the Claimant.

36. The Claimant's case was that, notwithstanding that her condition improved, she remained significantly impacted by it throughout 2016 up to the termination of her employment in 2017 and indeed up to the current time.

37. We paid particular attention to the Guidance issued by the Secretary of State on matters to be taken into account in determining questions relating to the definition of disability ("Guidance"). In that regard, we noted section B7 of the Guidance which indicated that account should be taken of how far a person can reasonably be expected to modify their behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day to day activities. The Guidance specifically mentions at this point that when considering modification of behaviour, it would be reasonable to expect a person who has chronic back pain to avoid extreme activities such as ski-ing but it would not be reasonable to expect the person to give up, or modify, more normal activities that might exacerbate the symptoms, such as shopping or using public transport.

38. We also noted the appendix to the Guidance which contains two lists of factors, one of which are factors where it would be reasonable to regard them as having a substantial adverse effect on day to day activities, and one where it would not be so reasonable. In this regard, in the latter list is found references to "*inability to move heavy objects without assistance or a mechanical aid, such as moving a large suitcase or heavy piece of furniture without a trolley*" and "*experiencing some discomfort as a result of travelling for example by car or plane, for a journey lasting more than two hours*". In the former list are included "*difficulty using transport*", "*difficulty in going up or down steps*", "*a total inability to walk, or an ability to walk only a short distance without difficulty*", and "*difficulty picking up and carrying objects of moderate weight, such as a bag of shopping or a small piece of luggage, with one hand*".

39. Taking the Guidance into account, we considered that, as the Claimant's own witness statement confirmed, she has been able, and was able at the relevant period of the latter part of 2016, to manage the majority of her

daily tasks unassisted. This did include some coping strategies, such as factoring in time for breaks on long car journeys and sitting in an aisle seat on an aeroplane to enable her to move around, but we nevertheless considered that such coping strategies did help the Claimant avoid her condition having a substantial impairment on many of her normal day to day activities. We also noted that the Claimant avoided going on adventure and activity holidays or undertaking matters such as hillwalking but we did not consider that those matters amounted to day to day activities.

40. We paid close attention to the Claimant's ability to carry items, the Claimant specifically referring to washing and bags of shopping, and her ability to undertake gardening, where she indicated she could no longer push the lawnmower. However, we were not satisfied that the Claimant's evidence in these areas supported her contention that her condition had the required adverse effect on her ability to carry out day to day activities at the relevant times.

41. With regard to gardening, we noted that the Claimant did undertake some gardening activities, but employed a gardener to do the heavier work such as mowing the lawn. However, we did not consider that mowing the lawn could be considered to be a day to day activity and we did not consider that the Claimant was sufficiently impacted in relation to her gardening activities to satisfy the definition.

42. With regard to lifting and carrying activities, we noted that the Claimant was able to carry washing up and down stairs, just not an entire basket of washing, and we also noted that the Claimant could carry bags of shopping. This was the area which caused us to focus most closely and we noted that in the appendix to the Guidance the list of factors considered to be reasonable to regard as having a substantial adverse effect on normal day to day activities included difficulty in carrying objects of moderate weight such as a bag of shopping with one hand. We noted that the Claimant, in answering questions, had indicated that she generally carried bags of shopping in each hand in order for her to be balanced and thus not put too much strain on her back. However, we noted that the Claimant's own witness statement noted "I can no longer carry bags of shopping <u>as I used to</u>" (our emphasis). This did not indicate to us that the Claimant could not carry bags of shopping.

43. Overall therefore, we were not satisfied that the Claimant's condition had had the required substantial adverse effect on her ability to carry out normal day to day activities for the required period of 12 months. We did not therefore consider that she was disabled for the purposes of the Act, and therefore concluded that her discrimination claims failed. Regardless of that however, we felt it would be appropriate to consider the content of her discrimination claims as though she were disabled. Before confirming our conclusions on those matters however, it was appropriate to deal with the Claimant's unfair dismissal claim which would still be one for us to consider regardless of our decision on disability.

44. With regard to the unfair dismissal claim, we noted that it rested solely on paragraph 30 of the Claimant's particulars of claim which stated: "*The Respondent failed to carry out a fair procedure in that they did not search for alternatives to redundancy and any alternative role available for her*".

45. We noted that there is a general expectation on employers when managing redundancy processes that they will search for, and then offer to an affected employee, any vacancy which might be considered suitable for them.

46. In this case, we noted that the Respondent's own redundancy policy noted that it would "*make every reasonable effort to support employees whose roles are at risk of redundancy to identify suitable alternative work*". The policy goes on to say: "*These employees will be notified of existing, pooled vacancies and will be given the opportunity to apply for them*", We noted that the Respondent had outsourced the management of the search for alternative employment to an external organisation, "Working Transitions" and we were conscious of a further document indicating that redeployment would be pursued by way of matters such as the allocation of a personal career manager.

47. Whilst giving evidence, the Claimant noted that the substance of a concern she indicated to the Respondent at the time of the redundancy consultation process was that she felt that the search for alternative employment should have been commenced earlier than was the case. The Respondent only undertook any steps in relation to alternative employment following the confirmation of redundancy in May 2017. However, we did not consider that there was anything unreasonable about that. In fact, we considered that had the Respondent commenced the process of searching for alternative employment in earnest before confirming the actual redundancy then it would have been open to criticism by the Claimant that its consultation with her was not meaningful. It could have been argued that the focus on the search for alternative employment at a time when the redundancy had not been confirmed indicated that the redundancy was clearly going to take place regardless of the consultation.

48. Viewed from the perspective of the reasonable employer, we could see nothing wrong with the Respondent's approach. It provided a list of the vacancies that were available to the Claimant once it had confirmed that she was to be made redundant, and whilst the Claimant was left to indicate to the Respondent any that she thought might be suitable we did not think this was unreasonable, certainly it was not outside the range of responses open to a reasonable employer. Ultimately, the Respondent was undergoing a significant restructuring process which led to a number of redundancies and, in the particular area within which the Claimant worked, led to eight out of the nine managers being made redundant. The Claimant herself confirmed that there were no alternative positions suitable for her and therefore there was nothing for her to apply for. Ultimately therefore, we did not consider that the Respondent had acted unreasonably or unfairly in its approach to alternative employment and therefore the Claimant had not been dismissed unfairly.

49. Returning to the Claimant's disability discrimination claims, as we have observed, we thought it would be appropriate, notwithstanding our conclusions on the issue of the Claimant's disability, to indicate our views on the substance of her discrimination claims in any event.

50. Dealing first with the direct discrimination claim, we did not consider that any of the issues identified by the Claimant amounted to direct discrimination. Acutely, our conclusions were that all the steps taken by the Respondent, in the form of Mr Lawrence, in relation to the Claimant in the period from August 2016 onwards were motivated by the issues arising from the very serious medical condition of the Claimant's partner and were not motivated by the Claimant's back condition. With regard to the removal of the Claimant's managerial responsibilities, and the consequent change to the organisational chart, we noted that the Unum VRC report noted that it had been agreed with the Claimant that that would happen pending resolution of her home situation, i.e. the situation regarding her partner as opposed to her own back condition.

51. Similarly, the issues regarding the Claimant's workload were also motivated by Mr Lawrence's concerns that the Claimant should not undertake too much work or certainly business-critical or time-critical work whilst her partner was severely ill and was undergoing intensive medical treatment. The Claimant appeared to have accepted that, as noted by her email to the HR manager in November 2016, but, in any event, even if the Claimant had not agreed to that and even if it could be contended that Mr Lawrence's approach was overly protective (which, for the avoidance of doubt, we do not consider was the case), the reason for the action he took was not the Claimant's back condition, but was the Claimant's personal circumstances and then, from early 2017 onwards, the state of flux within which the Respondent found itself.

52. We observe further that we did not see how any issues regarding unwillingness by Mr Lawrence to provide the Claimant with additional work or additional meaningful work from November 2016 onwards could have been connected to the Claimant's back condition. The Claimant was in full time work from that point onwards and, whether she was undertaking meaningful or more menial work, was working at her desk and her computer for some nine hours per day. We did not see that the question of whether Mr Lawrence could have given her additional work or more meaningful work could therefore have any connection to the Claimant's back condition as the Claimant's back condition had no bearing on the quantity of work that the Claimant was capable of producing at that time.

53. With regard to the Claimant's claim of discrimination arising from disability, the concerns regarding allocation of work have been dealt with above. As we have indicated, any issues regarding the Claimant's workload were not by reason of the Claimant's disability.

54. Similarly, with regard to the Claimant's concerns regarding redundancy selection, we did not consider that there was any unfavourable treatment

of the Claimant, let alone any treatment which was connected to any disability.

55. The Respondent's selection criteria were reasonable, certainly within the range of reasonable approaches that a reasonable employer could take in such circumstances, and appeared to have been reasonably and appropriately applied. We noted that the Claimant appeared to make much of the fact that she was not undertaking what she described as meaningful work at the end of 2016 and the start of 2017, which she asserted may have impacted on her scores. We were however satisfied from the scoring forms, and from Mr Lawrence's evidence, that neither the scoring structure not his specific scores impacted in any way on the Claimant arising from her absence.

56. The criteria, other than one relating to specific SOC1 experience, were broadly drawn and reflected the Claimant's general ability and experience with no specific focus on her most recent work. With regard to the SOC1 work, whilst the Claimant did not score highly on that point, she would, even if she had been given significant work in that area (which we did not think could potentially have happened due to the "cycle" of the particular work), would not have gained sufficient experience to have led to any higher mark.

57. As was accepted by the Claimant's representative, the Claimant's actual dismissal was connected to her selection for redundancy and therefore, having concluded that her selection was not discriminatory, we also concluded that her dismissal was not discriminatory.

58. Finally, turning to the reasonable adjustments point, we found it difficult to understand the Claimant's contention that the Respondent had operated a PCP of not obtaining additional medical assessments to determine the ability of disabled staff to increase their workloads. The Respondent had obtained six medical assessment from Unum between May and September 2016 and the last of those reports concluded that a re-referral would be made if the Claimant experienced any difficulty in increasing her hours or in resuming full duties. In the event, nothing arising from the Claimant's back condition caused any such difficulty and therefore there was no requirement for the Respondent to obtain any further medical assessment.

59. In our view, from August 2016 (the point at which it was anticipated that the Claimant would return to full time work), and certainly from November 2016 (the time at which she actually returned to full time work due to the delays arising from her partner's illness), the Claimant was physically capable of undertaking her work and there was no requirement for the Respondent to obtain any further medical evidence. The Claimant herself did not make any request for such and, as we have noted above, any decision taken by Mr Lawrence in relation to the Claimant's workload was taken by reference to the Claimant's need, as he saw it, to provide assistance to her partner, or due to the restructure undertaken within the Respondent's organisation.

60. With regard to the Claimant's contention that the Respondent operated a PCP of assessing staff during a redundancy procedure without taking into account the individual's disability, for the reasons we have outlined above, we did not consider that the redundancy procedure operated in any way to the detriment of an individual who had been absent, whether by disability or otherwise, and therefore there was nothing within its policy which required any adjustment.

61. In conclusion, notwithstanding our decision that the Claimant was not disabled for the purposes of the Act, we nevertheless concluded that, even if our decision on that point had been different, her various claims for disability discrimination would nevertheless have failed.

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Employment Judge S Jenkins

Date: ……26.09.18……..

Sent to the parties on: .....

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For the Tribunals Office