EMPLOYMENT TRIBUNALS

Claimant: **Mr Prince Blackson Nyamekye**

Respondent: **Phase II Care Limited**

Heard at: **Watford Hearing Centre (by video hearing)**

On: **6 to 9 June 2022 (4 days)**

Before: **Employment Judge G Tobin**
Mr S Bury
Mr M Kaltz

Representation
Claimant: Mr C Okereafor (representative)
Respondent: Mr G Hine (solicitor)

JUDGMENT

The unanimous Judgment of the Employment Tribunal is that: -

1 The claimant was unfairly dismissed, in breach of s94 Employment Right Act 1996.

2 At all material times, the claimant was a disabled person within the definition of s6 Equality Act 2010.

3 The respondent did not fail in its duty to make reasonable adjustments, pursuant to ss20 & 21 Equality Act 2010.

REASONS

The case

1 The claimant claims of unfair dismissal and disability discrimination in respect of a failure to make reasonable adjustments. The case was summarised by Employment Judge Laidler on 11 July 2019 and by Regional Employment Judge Foxwell on 22 February 2022.

The law

2 The claimant claims that he was unfairly dismissed, in contravention of section 94 Employment Rights Act 1996 ("ERA").

3 Section 98 ERA sets out how the Tribunal should approach the question of whether a dismissal is fair. First, the employer must show the reason for the dismissal and that this reason was one of the potentially fair reasons set out in s98(1) and s98(2) ERA. If the employer is successful at that first stage, the Tribunal must then determine whether the dismissal was fair under s98(4):

> Where the employer has fulfilled the requirements of subsection (1), the determination of the question of whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
> (b) shall be determined in accordance with equity and the substantial merits of the case.

4 The s98(4) test can be broken down to two key questions:

1. Did the employer utilise a fair procedure?

2. Did the employer's decision to dismiss fall within the range of reasonable responses open to a reasonable employer?

5 The respondent said that it dismissed the claimant for a conduct-related reason, pursuant to s98(2)(b) ERA. Although the claimant denies the misconduct in question, there is no dispute that this was a conduct-related matter. For misconduct dismissals, the employer needs to show:

a. an honest belief that the employee was guilty of the offence;

b. that there were reasonable grounds for holding that belief; and

c. that these came from a reasonable investigation of the incident(s).

These principles were laid down in *British Home Stores v Burchell [1980] ICR 303.* The principles were initially developed to deal with dismissals involving alleged dishonesty. However, the *Burchell principles* are so relevant that they have been

extended to provide for all conduct-related dismissals. Conclusive proof of guilt is not necessary, what is necessary is an honest belief based upon a reasonable investigatory process.

6 Accordingly, the emphasis of the case at the hearing was whether the Tribunal could be satisfied that, in all the circumstances, the respondent was justified in dismissing the claimant for the reasons given, i.e. in relation to his purported misconduct.

7 ACAS has issued a code of practice under s199 Trade Union and Labour Relations (Consolidation) Act 1992. Although the Code of Practice is not legally binding, in itself, Employment Tribunals will adhere closely to the relevant Code when determining whether any disciplinary or dismissal procedure was fair. The ACAS code of practice represents a common-sense approach to dealing with disciplinary matters and incorporates principles of natural justice. In operating any disciplinary procedure or process, the employer will be required to:

- Deal with the issues promptly and consistently;
- Established the facts before taking action;
- Make sure the employee was informed clearly of the allegation;
- Allow the employee to be accompanied to any disciplinary interview or hearing and to state their case;
- Make sure that the disciplinary action is appropriate to the misconduct alleged;
- Provide the employee with an opportunity to appeal the decision.

8 In *West Midlands Cooperative Society Limited v Tipton [1986] ICR 192* the House of Lords determined that the appeals procedure was an integral part of deciding the question of a fair process. Indeed, a properly conducted appeal can properly reinstate an unfairly dismissed employee or remedy some procedural deficiencies in the original hearing.

9 In judging the reasonableness of the employer's decision to dismiss an Employment Tribunal must be careful to avoid substituting its decision as to what was the right course of action for the employer to adopt for that which the employer did, in fact, chose. Consequently, the question for the Tribunal to determine is whether the respondent's decision to dismiss the claimant fell within the band or range of reasonable responses open to a reasonable employer: see *Foley v Post Office; HSBC Bank plc v Madden 2000 ICR 1283*. The range of reasonable responses test applies not only to the decision to dismiss but also to the procedure by which that decision is reached: *J Sainsbury plc v Hitt 2003 ICR 111 CA* and *Whitbread plc (t/a Whitbread Medway Inns) v Hall 2001 ICR 669 CA.*

Disability

10 S4 Equality Act 2010 ("EqA") identifies "disability" as a protected characteristic. So an employee should not be discriminated against on the basis of their disability.

11 S6(1) EqA defines disability:

A person (P) has a disability if—
(a) P has a physical or mental impairment, and
(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

12 The respondent accepted that the claimant met the definition of s6 EqA. His disability was dyslexia.

Failure to make reasonable adjustment

13 Under ss20-22 and schedule 8 EqA an employer has a duty to make reasonable adjustments in 3 situations:

i. where a PCP puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. This covers cases on *how* the job, process, etc is done;

ii. where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. This covers the situation of *where* the job is done;

iii. where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. This covers those cases where the provision of an *auxiliary aid* (e.g. special computer software for those with impaired sight) would prevent the employee being disadvantaged.

A failure to comply with any of these requirements renders that omission actionable as discrimination under s21 EqA. This claim is focused upon the first provision identified above.

14 It is important to note that the duty to make reasonable adjustments arises only where the disabled person in question is put at a “substantial disadvantage" in relation to a relevant matter in comparison with persons who are not disabled. In order to undertake the comparative exercise, the EAT held in *Environment Agency v Rowan 2008 ICR 218 EAT* that a Tribunal must identify the: (a) the PCP applied; (b) the identity of the non-disabled comparators (where appropriate); and (c) the nature and extent of the substantial disadvantage suffered by the claimant. We address the necessity for identifying properly the PCP both above and below.

15 The meaning of *provision, criterion or practice* is not defined in the legislation but, whilst neutral, will cover informal and formal working practices and is also intended to allow for an examination of working practices that do not operate as absolute requirements for the job in question. So, it is essential to determine a PCP in order to assess whether something the employer does to its employees gives rise to a difference in outcome, or has an adverse disparate impact, depending on the characteristics of its employees.

16 Possibly counter-intuitively, s212(1) EqA states that "substantial" means more than minor or trivial. Although substantial disadvantage represents a relatively low threshold, the Tribunal will not assume that merely because an employee is disabled, the employer is obliged to make reasonable adjustments. The Tribunal is obliged to consider the nature and extent of the disadvantage in order to ascertain whether the duty applies and then what adjustments would be reasonable, see *Environment Agency v Rowan*. The Tribunal should avoid making generalised assumptions about the nature of the disadvantage and failing to correlate the alleged disadvantage with the claimant's particular circumstances.

17 The duty to make adjustments arises only in respect of those steps that it is reasonable for the employer to take to avoid the disadvantage experienced by the disabled person. The reasonableness of the adjustment is an objective test: see *Smith v Churchills Stairlifts plc 2006 ICR 524 CA*.

18 The duty to make reasonable adjustments arises where a disabled person is placed at a substantial disadvantage "in comparison with persons who are not disabled": s20(3)-(5) EqA. There is a requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled persons: see *Fareham College Corporation v Walters 2009 IRLR 991, EAT*.

The witnesses and documentary evidence

19 We (i.e. the Tribunal) heard evidence from the claimant who had provided 4 written statement in advance of the hearing: an undated statements in respect of the Claimant's Disability and Reasonable Adjustments; statement dated 14 November 2019; supplementary statement dated 9 November 2020; and third statement dated 3 June 2022. The claimant confirmed all statements at the outset of his evidence. We also considered the evidence of Ms Jane Ambrose who had provided a witness statements dated 3 June 2022 and Mr Darrell James who confirmed his undated statement at the hearing.

20 On behalf of the respondent, we heard evidence from Mrs Jacqueline Tucker, who provided 2 undated witness statement and Ms Jaccie Turker, who also provided a witness statement. The respondent witnesses confirmed their statements prior to giving oral evidence.

21 All witnesses were cross-examined by their opponent's representative and the Tribunal asked the witness question, prior to re-examination. We were provided with a large hearing bundle, which ran to 736 pages and the claimant also provided an additional period bundle of 98 pages.

The facts

6 We made findings in respect of the following facts. We did not resolve all of the disputes between the claimant and respondent merely those matters which we regarded as appropriate to determining the issues of this case. In determining the following facts, we placed particular reliance upon contemporaneous or near contemporaneous correspondence, emails and documents. We approached the

witness statements with some care because this evidence was prepared sometime after the events in question and for the purposes of either advancing or defending the claims in question. Where we have made findings of fact, where this is appropriate, we have also set out the basis for making such findings.

7 The claimant was employed by the respondent is a key worker 2 February 2016.

8 On 17 June 2017 Mrs Turker wrote all staff in respect of various matters concerning health and safety issues and work schedules. During the course of this email she instructed staff not to carry clients in the private vehicles because claims have been made against staff in the past. She made a confusing note to this instruction "albeit as a goodwill gesture clients can sometimes turn this around". The claimant, nor any of the other staff as far as we can tell, queried this instruction and as a mandatory instruction this was not clear. There was no reference to any disciplinary action if this was not adhered to and indeed the disciplinary process was not altered to reflect that this might be considered either misconduct or gross misconduct.

9 Following a complaint received from a client the claimant was suspended by Mrs Turker on 9 October 2017.

10 An investigation meeting was conducted by Mrs Turker on 19 October 2017. Mrs Turker's daughter Ms Turker attended and took notes [HB135-143]. Mrs Turk said that the claimant had admitted having driven service users in his vehicle but said that he had permission to do so. In evidence Mrs Turker said that she had checked with the claimant's managers, although we determine that this was not the case because on such a crucial point there was no contemporaneous or subsequent corroborative evidence produced. Mrs Turker said that the claimant had also accepted he had exchanged telephone numbers and admitted having shown service users photographs music videos. She said that had checked with the managers and they denied that he was given permission for this. Again, for mainly the same reason we do not believe her.

11 On 30 October 2017 Ms Turker removed the claimant's access to his work emails and the next day (i.e. 31 October 2017) the claimant was invited to a disciplinary hearing [HB156]. The allegations were as follows:

- alleged breach of company rules and procedures, namely it is alleged you have been taken [sic] clients in your personal vehicle, which is a breach of company policy.
- Alleged breach of professional boundaries with the client's further particulars being that you have swapped telephone numbers with the client without prior authorisation from their social worker or management

12 That hearing was rescheduled and went ahead on 10 November 2017 [HB161-169]. At the outset of the meeting Ms Turker confirmed it was a formal disciplinary hearing, which she said she would chair. She said she would make no (final) decision that day; instead, she would hear evidence, establish the facts (as perceived by her) and carefully consider the claimant's responses before making a decision. The hearing commenced at 3pm and concluded at 5:55pm. The parties

dispute what happened at the meeting. At the meeting Mrs Turker said the claimant had become argumentative and forced the meeting to end. This is disputed by the claimant. The claimant may well have been uncooperative but so far as the respondent's notes are concerned, we make no criticism of him. The claimant's job was on the line and so was his reputation. He raised significant concerns during the meeting which were not allayed, by Mrs Turker.

13 Meeting was supposed to reconvene on 22 November 2017. However, the claimant was so concerned about his treatment under the disciplinary process that he raised a grievance on 20 November 2017. He raised a number of concerns, including concerns about the omission of evidence, records of the investigation and conflicting roles of individuals in the process. He also complained about his health [HB177].

14 The disciplinary process was suspended whilst the grievance was heard (but not the Grievance appeal). Mrs Turker instructed the respondent's representatives to hear the Grievance and Mr Paul Baker of HRFace2Face (part of the Peninsular Group) provided a report on 14 December 2017 [HB186-194]. The claimant appealed against this. A grievance appeal report was prepared by Mr George Hickman, of the respondent's representatives, but this report dated 1 February 2018 [HB244-253], was withheld from the claimant until his dismissal of 12 February 2018 [HB266]. So the Grievance was not resolved until the claimant was dismissed.

15 A "disciplinary hearing" was eventually set for 26 January 2018. The claimant did not attend the disciplinary hearing. 4 days before, on 22 January 2018, the claimant attended the offices of the respondent's representative for the grievance appeal hearing with Mr Hickman but he had been taken ill and an ambulance had been called. The claimant subsequently sought medical treatment. Mr Hickman proceeded without his attendance at the hearing 4-days later (but he permitted the claimant to make written submissions by 5pm that day).

16 Mr Hickman then proceed with his report, which was dated 1 February 2018 [HB254-263]. The disciplinary case added 2 additional charges:

1. Alleged rude and objectionable behaviour, namely threatening language in respect of a text of 1 December 2017 to Mrs Turker saying "am I getting paid today? And if not today I will send you any direct debit charges I get".

2. Alleged rude and objectionable behaviour, namely abusive and offensive language in that it was alleged that on 2 January 2018 the claimant sent a text message to Mr Turker stating "Are you going to pay or just keep on taking the piss by send email in regards to my grievance I've spoken to Paul today and I'm not impressed with what you're doing but tomorrow I'll send an email when I see my solicitor".

17 Mr Hickman considered some documents, which included: disputed minutes of meeting; the email of 17 June 2017; the text messages set out above; some unspecified emails; a sick notes; and contractual documents, including the disciplinary procedure. Significantly, he did not interview any of the managers that Mrs Turker said she spoke to.

18 Mr Hickman he did not attend the Employment Tribunal hearing in order to answer questions about crucial matters concerning the disciplinary process. He was not available to answer question in respect of the grievance outcome that affected the disciplinary process nor why he proceeded with the disciplinary hearing when the grievance had still not been resolved.

19 In addition, Mr Hickman made some "findings", but was not available to explain:

a. How he took account of Mrs Turker's previous disciplinary hearing and the circumstances of its adjournment.

b. How he reconciled the claimant's email being blocked and the instructions not to contact any members of staff with the proper opportunity to present evidence, particularly as we find Mrs Turkey did not undertake a fair and impartial investigation under the ACAS Code of Practice

c. Why he did not interview any of the managers whether or not it was common practice for staff to use their cars with service users

d. Why he did not speak to other staff, particularly Jude Ambrose, about the supposed common practice of staff using their own car with service users and also insuring their cars for such business use.

e. In respect of the service users having access to staff telephone numbers, how he dealt with the claimant's contention that contact details of all staff and social workers were on the staff work phones anyway.

f. How he assessed the claimant's sicknotes.

g. How he dealt with the claimant's dyslexia and his non-disability related health conditions, including distress and seizures. This is highly relevant both in the decisions to proceed with meetings and also in respect of Mrs Turker's plainly false assertion that a paramedic was able to determine the claimant had not suffering a seizure and then proceeded to breach patient confidentiality and professional ethics by telling his employer that he had made it up.

h. Whether he thought about whether or not the claimant was given a copy of his contract of employment as the claimant contends he was not ever given this.

i. How he determined that there was a gross misconduct offence in respect of driving service users in private cars as this was not identified in the disciplinary procedures as a specific offence.It is difficult to see how using a car to drive service users could reasonable or rationally endanger their lives, particularly when the email of 17 June 2017 warned about staff putting themselves at risk of possible compromising allegations.

j. How he considered the 2 texts as matter worthy of both disciplinary action and disciplinary sanction in the circumstances of raising tension, where the claimant contended proper processes were not followed and he appeared to be genuinely concerned that he was not going to be paid.

k. How he concluded trust and confidence had actually broken down, which was why he recommend the claimant be summarily dismissed.

l. Why he did not address possible mitigation.

20 Mrs Turker did not discuss Mr Hickman's report which him nor did she discuss his recommendations.

21 On 12 February 2018 Ms Turker sent the claimant the outcome of the disciplinary hearing [HB267]. She said:

> As you know we engaged a third party consultant to conduct the Disciplinary Hearing on 26th January 2018. Please find attached their report, which represents my decision.
> Having carefully reviewed the circumstances and evidence available to us, I have decided that your conduct has resulted in a fundamental breach of your contractual terms which irrevocably destroys the trust and confidence necessary to continue the employment relationship. The appropriate sanction to this breach is summary dismissal. I have referred to our standard disciplinary procedure when making this decision, which does not permit recourse to a lesser disciplinary sanction.
> You are therefore dismissed with immediate effect. You are not entitled to notice pay or pay in lieu of notice…

22 So Mrs Turker read the report and sent it to the claimant 12 days later. Gross misconduct is presumptive of summary dismissal, but it should not be inevitable as mitigation should be considered before the final decision is made. Ms Turker was not able to explain to us why she felt she was not permitted to impose a lesser sanction nor why she did not consider any mitigation.

23 The claimant appealed against his dismissal [HB275-277]. On behalf of the respondent, Mrs Turker instructed its representatives to deal with the appeal and Ms Joy Vasoodaven from HRFace2Face/Peninsula to dealt with the appeal. She produced a report dated 28 March 2018 [HB293-303] which said that the appeal should not be upheld. Ms Turker adopted this report without apparent engagement with Ms Vosoodaven and sent it to the claimant as representing her decision on 5 April 2018 [HB357]. The appeal was not contended by the respondent to be a rehearing, nor was it. As was the case with Mr Hickman, Ms Vosoodaven did not attend the Tribunal to answer questions and explain further her determination or recommendation.

Our determination

Unfair dismissal

24 Mrs Turker said during the course of the claimant's employment he had committed a number of misconducts including not comply with work instructions and

removing confidential information without permission, which sound serious. No formal action was taken nor was there any record of this available to us. If this was an attempt to besmirch the claimant, then we reject such aspersions. It also caste Mrs Turker in a poor light as an arbitrary, possibly vindictive employer, who did not seem to do the difficult or proper thing on those occasions.

25 In all but the smallest organisation, different people should carry out the investigation and conduct the disciplinary hearing, see paragraph 6 of the ACAS Code. Furthermore, in *Salford Royal NHS Foundation Trust v Roldan [2010] IRLR 721* the court appeal confirmed that, when carrying out investigations into allegations of gross misconduct, the employer should take into account the gravity of the potential consequences for the employee. This may mean a more thorough investigation is required when an employee's job is on the line and where the implications of safeguarding issues may have negative reverberations for the employee's career prospects. There was not at all a thorough investigation in the claimant's case. There was no corroborative evidence that confirmed Mrs Turker spoke to the managers, nor any investigation in respect of the claimant's contention that he adopted practices which were common to all staff and that he had done nothing wrong in respect of the telephone use. This was just ignored or dismissed.

26 The ACAS guidance stresses that employers should keep an open mind when carrying out an investigation; investigating officers task is to look for evidence that weakens as well as supports the employee's case if disciplinary action results in dismissal and there is an indication that the employer has prejudged the outcome, that can be enough to make it dismissal unfair: see for example *Sovereign Business Integration plc v Trybus EAT 0107/2007*.

27 The claimant contended that Mrs Turker was biased against him. The whole disciplinary process was chaotic. Mrs Turker was either unwilling or unable to conduct a fundamentally fair process. A complaint was made by a service user, who according to the claimant and Ms Ambrose and Mr James was an unreliable source. The service user was a regular complainant against staff and often fabricated stories. He retracted the complaint against the claimant. Mrs Turker chose to proceed with disciplinary action based on supposed admitted wrongdoing, which was strongly contested. The degree of Mrs Turker's hostility towards the claimant was clear from her statement, her exchanges at the Tribunal and her unwillingness to attribute anything the most negative motive to the claimant's response to the disciplinary allegations, to his ill-health and his disability and to his difficulties in attending various meetings. We regard Mrs Turker as a particularly biased employer. This is not a hindsight impression, her bias against the claimant was apparent throughout the investigation (such that it was) and after. In order to minimise the possibility of bias, the procedure should separate the process of investigation decision-making and appeal wherever possible, see *Whitbread plc trading as Whitbread Medway Inns v Hall 2001 ICR 699* and *Perkin v St George's Healthcare NHS Trust 2006 ICR 617 CA*.

28 Following her investigation, Mrs Turker presided over the disciplinary appeal for almost 3 hours. She took against the claimant because he challenged her investigatory and disciplinary process. She then instructed various individuals from her legal representatives to undertake hearings. We were very keen to try to understand

who were the decision-makers in respect of the claimant's disciplinary outcome and the disciplinary appeal. We remained puzzled. Mrs Turker said that she provided for an independent process – we reject this. There was nothing independent about instructing her legal representatives to preside over various hearing when this was not provided for in the disciplinary procedures, when the terms of their instructions were not clear and when Mrs Turker could explain who was the responsible decision-maker.

29 So, if Mr Hickman was the decision-maker in respect of the dismissal, which we think he was because he presided over the second disciplinary hearing and really determined the sanction, then his shortcomings are obvious and stated above. He seemed to do little more than endorse Mrs Tucker's one-sided criticism of the claimant. Ms Vasdoodaven role is equally flawed.

30 If Mrs Turker was the decision-maker for the investigation and then the dismissal and the appeal, then she abrogated her responsibilities onto others to conduct the other 2 essential elements of the disciplinary process and just rubber-stamped officer their recommendation (or decision) with little or no real engagement. In the disciplinary hearing outcome, Ms Turker said that she had reviewed the circumstances and the evidence available to the respondent and she said that she had decided that the claimant's conduct had both resulted in a fundamental breach of contract and that this had irrevocably destroyed the trust and confidence necessary to continue the employment relationship. She had decided the appropriate sanction summary dismissal and she dismissed claimant with immediate effect. We reject this. She merely wanted to get rid of the claimant and inserted Mr Hickman as a buffer or some form of rudimentary justification. There is no separate decision making thread. She rubber-stamped the decision made by Mr Hickman.

31 On the basis of the above, we do not accept that Mrs Turker had an honest belief that the claimant was guilty because of the circuitous process utilised so as to justify this dismissal. The respondent did not have reasonable grounds for holding that belief because of the one-sided investigation which that steadfastly refused to engage with the claimant's defences. It was obvious to us that Mr Hickman should have stopped the disciplinary process and instructed Mrs Turker – as the investigating officer – to go back and reinvestigate properly these complaints. The 2 additional complains added are surprising in their triviality. The claimant was worried and his intemperance was understandable in the circumstances of his poor treatment. No reasonable employer would have added these complaints and that is indicative of the desire to get rid of the claimant.

32 The investigation did not establish all of the relevant facts before taking action and the claimant was not allowed to state his case properly because, when presented with such a partial and flawed investigation, his email was cut off and he was told not to speak to other members of staff. These are significant breaches of the ACAS Code of Practice.

33 Our criticisms of Mr Hickman's role is mirrored in that of Ms Vosoodaven. Her review was little more than endorsing Mr Hickman's decision and did not remedy our concerns with his approach, as identified above.

34 In all the above circumstances, both the decision to dismiss and the process utilised, i.e., in the investigation, in both disciplinary hearings, in the dismissal of the grievance criticisms of the disciplinary process, in the disciplinary report, and in the appeal were outside the range or band of reasonable responses open to an employer of this size and type.

Reasonable adjustments

35 By letter dated 26 June 2019, the respondent conceded that the claimant was disabled within the meaning of s6 Equality Act 2010.

36 Mrs Turker said in her witness statement that she discussed possible reasonable adjustments at the claimant's interview and she said that he denied that he needed any. Mrs Turker said that she was aware that the claimant had told other staff about his dyslexia, but he did not bring it to her attention. She said she approached him to ask if any assistance was required but he said nothing was and she cannot remember exactly when this occurred because she did not make a note of this. The claimant denies this. Mrs Turker is not an entirely reliable witness. We believe she overstated her case because of her antipathy towards the claimant which was palpable. It was difficult to see Mrs Turker agreeing with anything the claimant said such was the level of hostility. This is disappointing to see in employer where we expect to see a more balanced and professional approach. Equally, because the claimant perceived he had been so badly treated he also became uncooperative in the disciplinary process and unwilling to give ground.

37 Surprisingly, little time at the hearing was taken with discussing the claimant's dyslexia and engaging with the reasonable adjustments that arose from this. The claimant's list of issues identifies the meeting on 22 January 2018, which was the grievance appeal where the claimant had a seizure. The complaint was around the claimant's inability to attend. The claimant also raised disputes involving participation at various disciplinary meetings/hearings. But this did not relate directly to the claimant's dyslexia, either on 22 January 2018 or elsewhere, but related to abdominal pain and stress-related illnesses. This is outside the scope for our analysis in respect of disability discrimination. The claimant was not put to any substantial disadvantage in respect of his attendance at these meetings because of his dyslexia.

38 We accept Mr Hine's submission that the claimant is not established that the was in place any provision, criterion or practice that put the claimant at a substantial disadvantage, in relation to a relevant matter, in comparison with persons who are not disabled. In any event, the claimant has not shown that he was put to a disadvantage in respect of his dyslexia. We are entirely satisfied that Mrs Turker jump to conclusions, was dismissive and then hostile to the claimant and then treated the claimant unfairly throughout the disciplinary stages however, it was nothing to do with his dyslexia.

Summary

39 The claimant was unfairly dismissed. The claimant was not subject to disability discrimination.

40 Case Management orders will be issued shortly in respect of remedy for the unfair dismissal.

_____

Employment Judge Tobin

Date: 28 November 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

28 November 2022

FOR THE TRIBUNAL OFFICE