



EMPLOYMENT TRIBUNALS

Claimant: Miss C Thomas

Respondent: First Trenitalia West Coast Rail Ltd.

HELD AT: Llandudno **on:** 29 April - 2nd May 2024

BEFORE: Employment Judge T. Vincent Ryan
Mrs J Beard
Mrs Y Neves

REPRESENTATION:

Claimant: Mr J V Jones, Trade Union Representative

Respondent: Ms. L Badham, Counsel

JUDGMENT having been sent to the parties on 3 May 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction:

1. This hearing of the Claimant's claims of disability discrimination was listed to be heard over five days; it was concluded in four days. The Claimant withdrew claims of Unfair Dismissal and Indirect Disability Discrimination; they were dismissed upon that withdrawal (no further Reasons being required in respect of the relevant judgment). The Claimant's claims of Direct Disability Discrimination, Failure to make Reasonable Adjustments and Discrimination Arising from Disability all failed and were dismissed.
2. In a situation where the Claimant is a disabled person, the claim concerns the management of the Claimant's ill-health absence from work and eventual dismissal.

3. At the outset it was confirmed that the Claimant's claim that she was unfairly dismissed had been formally dismissed following withdrawal by her. The remaining claims were therefore:
 - 3.1. direct disability discrimination
 - 3.2. discrimination arising from disability
 - 3.3. indirect disability discrimination
 - 3.4. failure to make reasonable adjustments.
4. The issues in the case were defined by employment Judge Brady at a preliminary hearing held on 10 May 2023 (see below).
5. The Respondent has conceded that the Claimant is a disabled person, and it concedes knowledge from January 2021.
6. The Claimant made an uncontested application to amend the claim of failure to make reasonable adjustments by adding reference to what were referred to as "stood off" arrangements, whereby an employee who is absent from work for reasons related to health or incapacity may remain absent from work on full pay for up to 2 years whilst seeking alternative employment with the Respondent. The Claimant maintains that she had the contractual right to "stood off" arrangements, such that they ought to be considered as a provision, criterion, or practice (albeit significantly advantageous to the Claimant), or alternatively, if there was no such PCP, these arrangements would have amounted to a reasonable adjustment. This amendment was granted.
7. The Respondent asked that the Claimant clarify the "group disadvantage" in relation to the claim of indirect disability discrimination; the Claimant did not do so; the claim was withdrawn and dismissed.
8. The Claimant complained about the absence from this hearing of the dismissing officer (TB) and the safety officer who removed the Claimant from active duty (NP). TB has left the Respondent's employment; the Respondent selected its witnesses and did not see the need to call NP. The Claimant had not asked either of these potential witnesses to give evidence, and that was her choice. In these circumstances there was nothing left to be said on that matter.
9. The Claimant's representative complained that he had not seen the hearing bundle before his arrival at the hearing centre today. Counsel for the Respondent confirmed that an initial bundle had been sent to the Claimant's representative and it had been updated when additional documents were agreed for inclusion. Time was allowed for the Claimant's representative to familiarise himself with the documentation and I encouraged the respective representatives to discuss these practical matters between themselves. Ultimately, they confirmed readiness to proceed.

10. We agreed a timetable for oral evidence, submissions and the Tribunal's deliberations. I explained that the Tribunal would hope to be in a position to deliver at least a judgment on liability during the course of the week, and subject thereto to deal with any remedy considerations. I explained about the publication of judgments and the entitlement to request written reasons.
11. The introductory, preliminary, matters took from 10 AM to 1 PM on the first day. The remainder of the day was spent by the panel in reading witness statements and essential documents, and by the representatives in discussion about documents, familiarisation with documentation, and general preparation.

Witnesses:

12. We heard evidence from the following witnesses on behalf of the Claimant:

- 12.1. the Claimant
- 12.2. P Price
- 12.3. A Owen
- 12.4. JV Jones
- 12.5. D Ireland
- 12.6. K Usher

13. We heard from the following witnesses on behalf of the Respondent:

- 13.1. P Holland
- 13.2. A Rennie Scrivens
- 13.3. R McMullen
- 13.4. J Ratcliffe
- 13.5. N Gray

Documents:

14. We were provided with an electronic bundle of 380 pages plus index, and a supplemental bundle of 67 pages plus index.

Adjustments:

15. Breaks were taken periodically to assist all concerned, especially taking into account that the room was very warm.

The Hearing:

16. Save for one inappropriate remark made to counsel for the Respondent by the Claimant's representative (for which I took him to task), the hearing progressed satisfactorily and in general the parties appeared to be cooperating to ensure efficiency.

The Issues:

17. The list of issues prepared by Judge Brady are appended. That list requires amendment by including reference to the "stood off" arrangements in the claim of failure to make reasonable adjustments, furthermore the Respondent clarified that the justification relied upon in respect of the claim of discrimination arising from disability was that its legitimate aim was to ensure and maintain effective and regular service for customers, and to maintain health and safety of the Claimant and other employees.

18. The claim of indirect disability discrimination was withdrawn and was dismissed.

The Facts:

19. The Respondent (R):

19.1. R is a large employer, trading as Avanti.

19.2. It has a professional HR Department and utilises professional occupational health advisers.

19.3. R issues written terms and conditions of employment supported by numerous policies, including in respect of absence management and ill-health.

19.4. R is a successor to British Railways, and more recently Virgin Rail. The 1985 British Railways "Conditions of Service Conciliation Staff" (referred to as the Blue Book) set out policies and procedures, possibly even contractual rights and responsibilities, in relation to the ill-health of rail staff. These included "stood off" arrangements (page 3 of the supplemental bundle) whereby staff, who are certified as unfit or fit only for restricted duties, with more than 10 years' service and where no suitable alternative work could be found for them, would remain in the employment of British Railways Board and would continue to be paid a basic rate of pay for their substantive grade for a maximum period of two years. At the end of that period if the member of staff had not been suitably accommodated, they would be subject to absence management, potentially leading to dismissal.

19.5. On 28 May 2000 Virgin Trains introduced conditions of service applicable from that date in respect of staff other than drivers, stated as superseding all existing agreements (pages 21 to 52 of the supplemental bundle). These conditions of service were agreed through the collective

bargaining mechanism with recognised trade unions; they were put to a ballot of members who were employed as on-board staff, with the support of the relevant trade unions; they were voted upon and passed by the relevant employed union members prior to adoption. These terms and conditions, (Conditions of Employment for On Board Staff Employed by West Coast Trains Ltd”, came into force and all earlier versions were superseded by mutual agreement.

- 19.6. By virtue of the new conditions of employment, “on board staff”, whilst enjoying other benefits, no longer benefitted from the “stood off” arrangements.
- 19.7. There was a transfer of undertakings from Virgin to Avanti. Employees transferred with their contractual rights and responsibilities, and in the case of all staff other than drivers, as per the 28 May 2000 conditions of service. Subsequent “on board staff” recruits to Avanti were engaged on the same conditions of service.
- 19.8. Through the collective bargaining mechanism, the relevant trade unions negotiated a separate set of terms and conditions for drivers. They negotiated terms and conditions that included “stood off” arrangements exclusively for drivers. They proposed that these terms and conditions to their driver membership and, following a ballot, they were accepted.
- 19.9. Whereas drivers employed by R had, and may still have, the benefit of “stood off” arrangements, by reason of the unions’ negotiations, ballot, and therefore mutual agreement, employees of R who are “on board staff” do not have the benefit of “stood off” arrangements.
- 19.10. The Blue Book did not apply to drivers in any event at any point. Drivers’ contracts were governed by what was referred to as the Purple Book comprising different terms and conditions to those of other staff, and therefore they were always treated differently.
- 19.11. In relation to medical incapacity there were two relevant categorisations for our purposes. Staff considered fit for work with restrictions (such as light duties or alternative duties because of ill health or disability) were referred to, certified as, “F2”; staff considered unfit to work for the foreseeable future were referred to, certified as, “U2”.
- 19.12. R had the practice of carrying out formal and informal risk assessments with a view to ensuring safe working practices for the health and well-being of staff and passengers, and for passengers’ convenience, while ensuring an effective and safe service. It also had practices and procedures to manage staff attendances and absences, including return to work interviews, occupational health referrals, and consideration of reports received from medical advisers. R would consider alterations to working practices such as phased returns to work, restricted duties, and temporary redeployment to suitable roles as well as redeployment to permanent roles where available and suitable.

20. The Claimant (C):

- 20.1. C is a disabled person, the disabling condition being hereditary spastic paraplegia. This is a progressive condition affecting mobility, stability and balance.
- 20.2. C was employed by R from 14 November 2004 until her dismissal with effect 20 January 2023 as “on board staff”. She was never employed by R or its predecessors as a driver.
- 20.3. She was initially employed as a Customer Service Assistant on board trains and was promoted to Assistant Service Manager. Whilst initially employed for 41 hours per week, by reason of her request to work flexibly, her hours were reduced over time to 27 hours per week. She was based at Holyhead.
- 20.4. The Claimant used to operate on the Holyhead – London route and latterly the Holyhead – Crewe route. Duties included, and were predominantly, the preparation and service of food and drinks including hot food and hot drinks, serving them to 1st class passengers at their seats and to other passengers at the on-board shop.
- 20.5. Whilst working in the on-board shop C could sit down between serving passengers. When serving passengers she would have to stand to prepare, amongst other things, hot food and hot drinks which she would then pass to passengers at the counter whilst she was standing up. These activities of preparation and service required an ability to balance and stability to avoid risk to her and to passengers of personal injury. In preparing and handling hot food and drink a person who was immobile, unstable, or lacked balance, would risk spillage and therefore contact with hot foodstuffs or the creation of slipping hazards on the floor. These risks involved commercial risk to R of legal action against it taken either by C and or colleagues if injured, or passengers if injured or inconvenienced or they otherwise suffered any loss and damage.
- 20.6. C was a diligent and conscientious employee who enjoyed her job. She was anxious to remain in employment, was upset by loss of employment, and while she is now otherwise employed, it is evident that she wished she had been able to remain in the employment of R until retirement.
- 20.7. R appreciated C as an employee. It did not seek to dismiss her. It was mindful of C’s well-being, her health and safety, and was supportive of her. The managers from whom we heard evidence were conscientious and diligent in their duty to her, passengers, and R.
- 20.8. C was absent from work in June and July 2021 following a bad reaction to Covid inoculation, and also an unreported incident in which she says she had difficulty closing a shutter which jarred her back. On 8 December 2021 she reached stage one of the Management for Attendance Policy and

Procedure (MFA) and procedure. She was not subsequently managed under this procedure. She was not dismissed under MFA. R did not engage its disciplinary policies or procedures in relation to C; there was no reason to do so, and it did not.

20.9. The setbacks in June and July 2021 appear to have exacerbated the C's disabling condition and symptoms. She was mindful of her lack of mobility and instability when executing her duties on board. She made an informal arrangement with colleagues that they would serve first class passengers at their seats while she would remain in the on-board shop. This meant that she did not have to walk the aisle on a moving train carrying food and drinks. Despite the handles on the top of the seats to aid stability, C still felt a lack of confidence in serving the first-class passengers because of the effects of her progressive disabling condition. She also accepted an arrangement whereby she worked on the shorter Holyhead – Crewe route rather than Holyhead – London route (an adjustment made to assist her).

20.10. In late 2021 R made a generalised offer of a voluntary severance package to staff. On 14 October 2021 C applied for voluntary severance, both because the offer was made and because of what she considered to be her decline in mobility. Her application was unsuccessful. Nobody based at Holyhead was successful in their applications for voluntary severance, which ultimately was only granted in one depot (not Holyhead).

20.11. The informal arrangements made by C about the execution of her duties on board the train, her acceptance of the shorter route, and her application for voluntary severance corroborate the extent of C's conscientious concern about her capability in the light of her medical condition.

21. R proposed carrying out a risk assessment upon C. Before the safety officer (NH) had an opportunity to arrange a formal risk assessment towards the end of 2021, NH observed C at work on a journey in December 2021. NH was concerned at the limitations in C's stability and mobility at work. She recommended removing C from on-board working. This was not a formal risk assessment but was an accurate observation of C at work, in that NH's observation and concerns were corroborated by occupational health advisers who went on to certify that C was unfit for on-board working. It was the occupational health assessment that informed management when it made its decision to redeploy C, and subsequently to dismiss her. The risk assessment itself did not prevent C from working in her role as a caterer on the train. With the certification of unfitness to work on board the train for the foreseeable future, R did not repeat an informal risk assessment or conduct a formal risk assessment; this was in reliance on medical certification. The Tribunal is satisfied, infers from the facts found, that had occupational health advisers certified the claimant to be F 2, that is able to work with restricted duties and had said that those restricted duties could be on board the train rather than in sedentary roles, R would have permitted an on-board risk assessment.

22. C was redeployed to work in an administrative role at Holyhead pending any further development and the involvement of occupational health. There was no

specific job role available at Holyhead, but R engaged C assisting in administrative work as and when it was available because the office was busy at the time; C would be given specific tasks to do supporting a manager, but there were occasions (when C had completed delegated tasks) that she had nothing to do, through no fault of her own.

23. R encouraged C to look for suitable alternative employment with it. In July 2022 R made a specific offer to C of an administrative role that was available in Crewe. Given that the commuting time for the return journey from C's home near Holyhead to Crewe would take over four hours, she deemed this position unsuitable for her. It was the only administrative role that R could offer C at the material time. C declined the offer. At the date of her eventual dismissal there were no other suitable administrative jobs in the offering.
24. C had various ill-health-related absences from work, including for stress. R followed its usual policies and procedures properly, ensuring return to work meetings, keeping in touch with C, initially sanctioning her informal arrangements with colleagues that she would only work in the on-board shop and not deliver orders to 1st class passengers, shortening of her route to Holyhead – Crewe only, redeployment on a temporary basis assisting with administrative work at Holyhead, and encouraging applications for, and offering, permanent roles when available.
25. Occupational Health: R referred C to its Occupation Health advisers as follows:
 - 25.1. 24 February 2021 (report dated 25 February 2021 p296-7): C was certified F 2, fit to work on board with restricted duties. There was a recommended phased return to work, initially carrying out the shorter run to Crewe. A six-monthly review was advised.
 - 25.2. 9 March 2022 (page 308-310): C was certified U2 due to her progressive condition, although she was fit for sedentary duties in administrative or a ticket office role; permanent redeployment was recommended. The report confirmed a significant risk of falls if C worked on board trains. The use of splints was recommended. Her condition was considered likely to amount to a disability.
 - 25.3. 6 April 2022 (page 311 – 312): the report, in answer to a request for clarification, confirmed the view of “high risk of falls with injuries” and the recommendation of a sedentary role if operationally feasible. There was a suggestion of consideration of a workplace risk assessment with C using splints or other orthotics to improve balance.
 - 25.4. 20 July 2022 (report dated 21 July 2022 pages 318 – 319): this report confirmed that C remained permanently unfit to work as caterer on board (U2) concluding that the risk of falls with serious complications to health would outweigh the benefit of working on board; there was a recommendation of an alternative role in office work or working from home if

operationally feasible. The report commented that C was aware of this position and that she approved it.

- 25.5. During the course of the hearing C produced correspondence from an occupational health advisor in response to enquiries made by R. The gist of this correspondence was that the ultimate decision as to C's role and continued employment was one to be taken by R, and not by an occupational health advisor.
26. C presented two grievances during her employment. She appealed the grievance outcomes and also appealed the decision to dismiss her. Whereas C has made claims in respect of the decision to dismiss her, she has not made any claim of disability discrimination or victimisation, in relation to the management of her grievances.
27. On 12 October 2022 the claimant attended an ill-health meeting when, following a discussion and representations by C, she was informed that she was being dismissed with notice. She had been working in her temporary administrative role since January of that year. She was still certified as U2 with no foreseeable return to her substantive role, notwithstanding the use of splints to assist her. There was no permanent role available for her in Holyhead, and the only suitable role for her was in Crewe (which she had declined for reasonable reasons). The commuting distance rendered that role unsuitable for her. C wished for the administrative role in Holyhead to be made permanent or that she be allowed to work in the onboard shop. It was also argued on her behalf that she was entitled to be "stood off", to remain on full pay for up to 2 years whilst looking for suitable alternative employment with R, but that if she was not able to return to her substantive role within two years then, and only then, could R proceed along the ill health route.
28. There is no evidence before the Tribunal to suggest that any person employed by R who was certified as U2 was permitted to return to work, either on restricted duties in the onboard shop or in their substantive role regardless of that certification. The Tribunal accepts that the comparators relied upon by C were on occasion permitted to carry out restricted roles in the onboard shop but that none of them was truly a comparator, as none of them was certified U2; all those people suggested by C as being allowed to work in the on-board shop only were certified F2, fit for work with restricted duties.
29. The effective date of termination of employment, C having failed in her appeal against dismissal, was 20 January 2023. She received an ill-health payment and all monies due to her on termination.

The Law: in essence the legal test is set out in the appended list of issues.

30. For a claim of direct disability discrimination to succeed, a claimant must prove facts from which the Tribunal could conclude that they were treated less favourably than a named or hypothetical comparator, because of disability. If a claimant does so then it is for a respondent to prove a non-discriminatory reason for the treatment. There must therefore be a detriment and less favourable treatment than a person whose circumstances are not materially different to the

claimant's. other than in respect of disability, and the reason for the less favourable treatment must be disability.

31. Where the claim is one of discrimination arising from disability, a Tribunal must make findings as to what arose from disability, was there unfavourable treatment by a respondent, whether the reason for the unfavourable treatment was the "something" arising from disability, and, subject to that, whether the respondent's treatment was a proportionate means of achieving a legitimate aim. The respondent must establish its legitimate aim.
32. When a claim is made of a failure to make reasonable adjustments, the Tribunal must decide whether or not there was something that the respondent does work, having a provision, criterion, or practice in effect (a PCP) which put a claimant at a substantial disadvantage compared to someone without the claimant's disability. If such a substantial disadvantage arises there is a statutory duty on an employer to make reasonable adjustments to remove that disadvantage.

Submissions:

33. Both parties made submissions, but they did not materially differ as to the applicable law. Their respective submissions concentrated on facts and the application of law to facts as they respectively saw them.

Application of law to facts:

34. Direct Disability Discrimination:

- 34.1. R carried out an informal, but effective, risk assessment, NH observing C at work in December 2021. C was certified by medical advisers as fit for restricted duties and she conducted those administratively at Holyhead. She was then certified as unfit to work for the foreseeable future and was not therefore available for an on-board at work risk assessment. Requiring C to work, even for the purposes of conducting a risk assessment on board a moving train preparing and serving food and drinks, would have put her at a significant risk of personal injury, endangering customers, and exposing R to commercial and reputational risk. The Tribunal finds that the claimant was not treated less favourably than her named or any hypothetical comparator in that R did not put her at that significant risk. There was no evidence before the Tribunal as to the risk assessments conducted on named comparators. The comparators relied upon were not truly comparable because none of them was certified U 2.
- 34.2. The claimant was not subjected to disciplinary procedures as alleged. She was appropriately managed under MFA. There is no evidence before the Tribunal that she was treated less favourably than any named or hypothetical comparator was or would have been.
- 34.3. C was dismissed because she was certified U2 in circumstances where there was no suitable alternative role for her. She was not dismissed because she was disabled. The Tribunal is satisfied that C would have remained in the

employment of R had she been considered fit to return to her substantive role, with or without restrictions, or if she had obtained a suitable alternative post for which she was certified fit. R wished to retain her in employment. It went to considerable lengths to accommodate her and to sustain the employment relationship; it made reasonable adjustments for her. Ultimately R dismissed C because she was unfit for her role and it was considered, as she is a progressive condition, that she would not be fit to return to it in the future, and the only alternative role available to her was not considered by her to be viable.

34.4. C was not therefore treated worse than someone else would have been where there was no material difference in their respective circumstances. The reason she was treated the way she was, was not due to disability. Neither the risk assessment nor the implementation of MFA with detrimental. C was not dismissed under the MFA. Dismissal is a detriment but, as repeatedly stated, the reason was not disability but unfitness for work with no available alternative.

34.5. C's direct disability discrimination failed.

35. Discrimination Arising from Disability:

35.1. C was absent from work due to stress, but the Tribunal accepts that her progressive disabling condition was contributory. It could be said therefore that her sickness record was something that arose in consequence of her disability. Her difficulties with balance and serving customers food and drink, both first class passengers at their seat and any passenger at the on-board shop, arose in consequence of her disabling condition; she had difficulty with balance, stability, and mobility.

35.2. Because of her difficulty with balance and stability, C was informally risk assessed as being unsuitable at that time to work in the on-board shop. That assessment did not permanently remove her from her role, but it led to referral to occupational health advisers. It was certification as unfit for work with no suitable alternative or the potential for reasonable adjustments that led to her removal from her post and eventual dismissal.

35.3. The claimant was not dismissed because of her sickness record.

35.4. She was certified as unfit for her role because of difficulties with balance and with serving customers food, giving rise to significant risk of personal injury and damage (potentially to C, but also to passengers and thereby to R). R sought to ensure and maintain effective and regular service for customers and to maintain the health and safety of C and other employees. In this aim it was guided by medical advisers. It took due account of advice received from its occupational health advisers that the C was unfit for work. It sought alternatives for her. It accommodated her temporarily in administrative duties. It encouraged her to apply for other roles. It offered her a position at Crewe. When there were no other available suitable roles for her and she remained certified as permanently unfit, or unfit for the foreseeable

future, with a progressive condition, R dismissed her. It had no option. Dismissal was a proportionate means of achieving its legitimate aim in circumstances which included C's eligibility for an ill-health payment. The Tribunal also considers it significant that C had applied for a severance payment in large part because she foresaw a difficulty in maintaining safe employment in her on-board role and where she herself only envisaged being able to work in the on-board shop and not serving customers; working only in the shop also posed risks to herself, passengers, and thereby to R. R had tried "less discriminatory", action but there was nothing left for it but dismissal. R had knowledge of C's disability from January/February 2021.

35.5. This claim fails.

36. Failure to make Reasonable Adjustments:

36.1. R had the PCPs of managing employee attendance/absence to reduce staff absences, of assessing safety of its employees, and reducing risks on trains.

36.2. R applied these PCPs to C as it did to employees who do not live with disabilities.

36.3. Insofar as C's absences were contributed to or exacerbated by her disabling condition as opposed to stress, C could have been at a disadvantage compared to a colleague who was not a disabled person, and even at a substantial disadvantage. She was not disadvantaged by R's practice of assessing the safety of its employees as this is advantageous.

36.4. C was not dismissed under the MFA, and was therefore not disadvantaged by it, let alone put at a substantial disadvantage. In any event MFA was a proportionate means of achieving R's stated legitimate aim, to ensure and maintain effective and regular service for customers and to maintain the health and safety of C and other employees.

36.5. It would not have been reasonable to allow C to remain working in the shop on the train as she was certified as unfit to work the foreseeable future, including in the shop. In the shop she would have to stand while preparing and serving food and drink to customers, including hot food and drink while the train was moving.

36.6. There was no office-based work available to her at Holyhead, and the nearest available role was in Crewe which she declined. It would not been reasonable to expect R to make a job for her. When she was required to assist a manager with her administrative jobs, C was given this temporary assignment. That work was not permanent. There was not much of it. The delegation took some pressure off the manager but was primarily designed to occupy C if and when such tasks could be delegated to her; that was not a viable long-term role.

36.7. C amended her claim of a failure to make reasonable adjustments to introduce the “stood off” arrangements.

36.7.1. The contractual provisions relating to C were clearly stated in her applicable terms and conditions of employment. Those terms and conditions specifically superseded the Blue Book. The stood off arrangements did not apply to on-board staff. Only drivers benefited from the negotiated and accepted “stood off” provisions. C’s contractual provisions were those reached through collective bargaining mechanisms and were accepted by ballot of trade union members before being enshrined in the contractual documentation. “Stood off” arrangements were not PCPs in respect of on-board staff.

36.7.2. It is not for the Tribunal to impose new contractual provisions on parties who have mutually agreed existing terms. A Tribunal may interpret a contract. A contract should be interpreted to give effect to its clear and unambiguous wording. In circumstances where a contract is ineffective or for some reason does not work in achieving the parties’ intended purpose, such as because of the terminology employed then, and only then, a Tribunal interpret the contract to give it effect by adding or altering terminology; it can only do so in very these very limited circumstances and it must do so restrictively. In this particular case C’s contract is clear and unambiguous. It would be inappropriate for the Tribunal to infer that she could benefit contractually from the “stood off” arrangements. They do not apply to her. They are not applicable PCPs.

36.7.3. If the “stood off” arrangements were PCPs then clearly, they would not put the claimant at a substantial disadvantage compared to others. They would be a substantial advantage.

36.7.4. In such circumstances the “stood off” arrangements would not amount to a reasonable adjustment either. It would be unreasonable to require this employer to make an exception for this claimant by rewriting her contract, reintroducing benefits that had been signed away and leaving open the argument that the old contractual provision should apply. It appeared to the Tribunal that there had been a considerable amount of negotiation around the terms of the Blue Book and the superseding terms and conditions that were not only negotiated but balloted upon and accepted. It was said on behalf of C that the negotiating union had always intended the old provisions would apply by default. That is not what the claimant’s terms and conditions of employment say. This was an unreasonable suggestion made on behalf of C by her representative. It would ride a coach and horses through a long-standing contractual agreement, with potentially far-reaching commercial implications.

36.7.5. Over and above the unreasonableness of the suggestion that “stood off” arrangements should be applied, are the facts that C has a progressive condition, sadly she is currently unfit to work, and that unfitness is certified as being for the foreseeable future. There is no

available administrative role that she considers suitable (the only one being Crewe). It follows that the likelihood, if “stood off” arrangements were applied, is that the claimant would remain on full pay for two years and then be subject to MFA and dismissed. There is no foreseeable likelihood of C returning to her substantive role within two years or thereafter. Again, the “stood off” arrangements would not be a reasonable adjustment; they would be an unreasonable imposition that would not remove disadvantages facing C at work but would just provide her with payment while not at work. The rationale for the statutory duty is to empower people to work and to facilitate their working, and not to pay them while they do not work while having no likelihood of doing so.

36.8. This claim fails.

Employment Judge T V Ryan

Date: 20 May 2024

REASONS SENT TO THE PARTIES ON 21 May 2024

FOR THE TRIBUNAL OFFICE Mr N Roche