



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Miss C R Behzadifar

Respondent: British Airways plc

Heard at: London South

On: 09, 10, 11 and 12 April 2018

Before: Employment Judge Freer
Members: Ms H Pollard
Mr M Harding

Representation

Claimant: In person
Respondent: Ms G Hicks, Counsel

REASONS FOR JUDGMENT

1. These are the reasons for the judgment sent to the parties on 16 May 2018 that it was the unanimous judgment of the Tribunal that the Claimant's claims were unsuccessful.
2. These reasons are produced at the request of the Claimant. Oral reasons were provided at the hearing.
3. The Claimant gave evidence of her own behalf.
4. Ms Mairead Brew, Inflight Business Manager; Mr David Hoade, Talent Transition Consultant within the Career Transition Service; Mr Jonas Pettersson, Customer Services Manager; and Ms Jacqueline Quamina, British Airways Health Service Occupational Health Advisor, gave evidence for the Respondent.
5. The Tribunal was presented with a bundle of documents comprising 403 pages.

The Issues for Determination

6. The List of Issues for the Tribunal to determine is set out in a Case Management Order dated 05 October 2016 which is at page 34 of the bundle of documents, save that the issue of the Claimant's disability of Myalgic Encephalomyelitis was conceded by the Respondent.

A summary of the applicable law

The duty to make reasonable adjustments

7. Sections 20 to 21 of the Equality Act 2010 set out provisions relating to the duty to make adjustments

“(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, 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, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, 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, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

. . . (13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

8.	<i>Part of this Act</i>	9.	<i>Applicable Schedule</i>
10.	Part 5 (work)	11.	Schedule 8

21 Failure to comply with duty

- (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.”

12. Schedule 8 provides:

SCHEDULE 8
 Work: reasonable adjustments
 Part 1
 Introductory

1 Preliminary

This Schedule applies where a duty to make reasonable adjustments is imposed on A by this Part of this Act.

2 The duty

- (1) A must comply with the first, second and third requirements.
- (2) For the purposes of this paragraph—
 - (a) the reference in section 20(3) to a provision, criterion or practice is a reference to a provision, criterion or practice applied by or on behalf of A;
 - (b) the reference in section 20(4) to a physical feature is a reference to a physical feature of premises occupied by A;
 - (c) the reference in section 20(3), (4) or (5) to a disabled person is to an interested disabled person.
- (3) In relation to the first and third requirements, a relevant matter is any matter specified in the first column of the applicable table in Part 2 of this Schedule.

Part 2

Interested disabled person

4 Preliminary

An interested disabled person is a disabled person who, in relation to a relevant matter, is of a description specified in the second column of the applicable table in this Part of this Schedule.

5 Employers (see section 39)

(1) This paragraph applies where A is an employer.

13. <i>Relevant matter</i>	14. <i>Description of disabled person</i>
15. Deciding to whom to offer employment.	16. A person who is, or has notified A that the person may be, an applicant for the employment.
18. Employment by A.	19. An applicant for employment by A. 20. An employee of A's.

21. The Equality and Human Rights Commission has produced a Code of Practice on Employment (2011) (“the Equality Code”). The Code of Practice does not impose legal obligations, but provides instructive guidance. The Tribunal has referred itself to the Code as appropriate. This has been taken into account by the Tribunal. For example, the Equality Act 2010 no longer lists factors to be considered when determining reasonableness, but these factors appear in the Code of Practice (paragraph 6.28). However, it will not be an error of law to fail to consider any of those factors. All the relevant circumstances should be considered.
22. The duty to make adjustments may require the employer to treat a disabled person more favourably to remove the disadvantage which is attributable to the disability. This necessarily entails a measure of positive discrimination (**Archibald v Fife Council** [2004] IRLR 651, HL).
23. The test of reasonableness is an objective one.
24. A failure to consult is not of itself a failure to make a reasonable adjustment (see **H M Prison Service & Johnson** [2007] IRLR 951, EAT).
25. The correct approach to assessing reasonable adjustments is addressed in **Smith –v- Churchills Stairlifts plc** [2006] IRLR 41; **Environment Agency – v- Rowan** [2008] IRLR 20; and **Project Management Institute –v- Latif** [2007] IRLR 579.
26. In **Smith**, the comparative exercise required by s.6(1) of the DDA was considered by the Court of Appeal having regard to the speeches contained in the judgment of the House of Lords in **Archibald**. Maurice Kay LJ stated:

27. “. . . Notwithstanding the differences of language, it would be inappropriate to discern a significant difference of approach in these speeches. . . it is apparent from each of the speeches in **Archibald** that the proper comparator is readily identified by reference to the disadvantage caused by the relevant arrangements”.
28. The Court of Appeal in **Matuszowicz –V- Kingston Upon Hull City Council** [2009] IRLR 288 held that there may be breaches of the duty to make reasonable adjustments “due to lack of diligence, or competence, or any reason other than conscious refusal”.
29. With regard to knowledge the EAT in **Secretary of State for the Department of Work and Pensions v Alam** [2009] UKEAT 0242/09 held that the correct statutory construction of s 4A(3)(b) involved asking two questions: (1) Did the employer know both that the employee was disabled and that his disability was liable to affect him in the manner set out in section 4A(1)? If the answer to that question is: 'no' then (2) Ought the employer to have known both that the employee was disabled and that his disability was liable to affect him in the manner set out in section 4A(1)? If the answer to that question is also 'no', there is no duty to make reasonable adjustments.

Discrimination arising from disability

30. Section 15 of EqA provides:

“(1) A person (A) discriminates against a disabled person (B) if—
(a) A treats B unfavourably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”
31. When considering a proportionate means of achieving a legitimate aim, the Tribunal will assess whether the aim of the provision, criterion or practice is legal and non-discriminatory, and one that represents a real, objective consideration and if the aim is legitimate, whether the means of achieving it is proportionate including whether it is appropriate and necessary in all the circumstances.
32. As confirmed in the Supreme Court in **Homer –v- Chief Constable of West Yorkshire Police** [2012] UKSC 15:

“As Mummery LJ explained in *R (Elias) v Secretary of State for Defence* [2006] EWCA Civ 1293, [2006] 1 WLR 3213, at [151]:
“. . . the objective of the measure in question must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end. So it is necessary to weigh the need against the seriousness of the detriment to the disadvantaged group. . . . First, is the

objective sufficiently important to justify limiting a fundamental right? Secondly, is the measure rationally connected to the objective? Thirdly, are the means chosen no more than is necessary to accomplish the objective?"

As the Court of Appeal held in *Hardy & Hansons plc v Lax* [2005] EWCA Civ 846, [2005] ICR 1565 [31, 32], it is not enough that a reasonable employer might think the criterion justified. The tribunal itself has to weigh the real needs of the undertaking, against the discriminatory effects of the requirement.

. . . To be proportionate, a measure has to be *both* an appropriate means of achieving the legitimate aim *and* (reasonably) necessary in order to do so".

Findings of fact and associated conclusions

33. The Claimant began working for the Respondent on 28 March 2014 as Mixed Fleet Cabin Crew. In December 2014 she became unwell. As a result, the Claimant became unfit for flight duties and regrettably did not regain fitness to be able to fly and resume her contractual role as Cabin Crew and was eventually dismissed from her position.

34. With regard to the chronology and findings of fact, the Tribunal referred itself to the Respondent's helpful cast list and detailed chronology with bundle page references, which is annexed below ("Annex 1"). The Tribunal took care and time going through the chronology and finds that the dates and matters raised in it are correct and relevant, with a few additions made by the Tribunal: -

(i) With regard to the reference to the notes of Ms Quamina of 23 April 2015, where within those notes she states "if this is the diagnosis the Claimant will not be able to continue flying", the Tribunal finds that the meaning by Ms Quamina is that the Claimant would not be able to continue flying at that time, which is consistent with the Respondent's evidence that there are other employees with the same disability as the Claimant who are still on flying duties.

(ii) With regard to the reference to the report by Dr Bansal on 10 July 2015 (which is at page 42 of the bundle) it is disputed whether or not the Respondent was presented with that document. The Tribunal concludes that nothing turns on that finding of fact because page 110 of the bundle and the Occupational Health Referral notes of Ms Quamina confirm that the Claimant had informed the Respondent of her diagnosis. In any event the Respondent treated the Claimant as a disabled person from a very early stage in the internal proceedings.

(iii) With regard to the reference relating to the Claimant's employment as a student helper at University in late October, the Tribunal accepts the Claimant's evidence that she entered into a contract with the University in October 2015 but was not due to commence any work until January 2016.

(iv) With regard to the reference to the notice of termination letter on 17 December 2015, the Tribunal records that the Claimant's evidence was that she

received that as a pdf document by email on 23 December 2015. The Respondent informed the Tribunal that it was signed for as a recorded delivery at an earlier stage. The Claimant's evidence was that she did not receive or sign for that letter at the time.

35. With those few minor amendments made, the Tribunal adopts the chronology and facts set out and annexed below.

Reasonable adjustments

36. The Tribunal will address this issue first as it may inform the decision on the Claimant's discrimination arising from disability claim.
37. The reasonable adjustment claim relies upon a pcip of 'requiring cabin crew to meet certain standards of physical fitness'.
38. The Tribunal has referred itself to the case of **Archibald -v- Fife Council** [2004] IRLR 651 in which the Claimant was placed at a substantial disadvantage in comparison persons who were not disabled where her job description required her to be physically fit, she was no longer able to meet that requirement, which exposed her to a position where she was vulnerable to dismissal.
39. The Tribunal concludes in the circumstances of the instant case the substantial disadvantage relied upon by the Claimant compared to non-disabled persons is her dismissal. The comparable group is non-disabled persons able to achieve the required standards of physical fitness and who would therefore not be exposed to potential dismissal.
40. The reasonable adjustment suggested by the Claimant was to redeploy her to a ground-based vacancy.
41. Many adjustments were made by the Respondent, as set out in detail at paragraph 26 of the Respondent's skeleton argument, summarised as follows: (i) a temporary ground placement; (ii) adjustments to that temporary ground placement so the Claimant worked reduced hours; (iii) the Claimant not being required to work set shifts; (iv) further adjustments made to the temporary ground role of 8 weeks at 3 alternate days per week at 6 hours per day; those adjusted hours being extended; (v) a referral to the career transition service ("CTS") to assist the Claimant in looking for alternative roles; (vi) the time allowed for that service being extended by three months; (vii) meetings being rearranged; (viii) the Claimant's contractual notice period being extended; (ix) a proposed adjustments to the Claimant's flying role from 14 December 2015 as she had taken up that roster, which included trips of a maximum 6 days over 3 sectors; (x) the termination date was further deferred; (xi) unpaid leave for a period between 20 October 2015 and 03 November 2015; and (xii) the final termination period was extended from two weeks to three weeks. The Tribunal concludes that in the circumstances these were all reasonable adjustments made by the Respondent to assist the Claimant and to avoid the prospect of her dismissal.

42. The pcg and the substantial disadvantage compared to non-disabled persons are clearly made out by the Claimant and the Tribunal finds that the Respondent did know, or ought reasonably to have known, both of the Claimant's disability and of the disadvantage.
43. The Tribunal concludes that although the Respondent referred the Claimant to the British Airways Health Service on numerous occasions where she was seen by Ms Quamina an Occupational Health Advisor, the Respondent could have referred the Claimant to an Occupational Health doctor and received information that way, rather than at times falling reliant on information conveyed by the Claimant regarding her medical condition. However, the Tribunal concludes that nothing turns on that particular point. All considerations lead to the question of whether reasonable adjustments could have been made.
44. There are a number of ground-based roles that have been considered during the course of this hearing.
45. Before the Tribunal addresses that particular point, it concludes that the CTS procedure was a reasonable policy for the Respondent to adopt, as was the extension of time for its application to the Claimant of five months from the period stipulated in the Colleague Guide of two months.
46. The Tribunal has referred to **Archibald**, above, which confirms that as part of a reasonable adjustment there can be an element positive discrimination. **Archibald** refers to the creation of a job in certain circumstances as possibly being a reasonable adjustment.
47. The Tribunal has considered particular authorities referred to it by the Respondent of **Wade -v Sheffield Hallam University** [2013] EqLR 951, which simply says it is not reasonable to require an employer to disapply the essential elements of a job, and **Chief Constable of South Yorkshire Police -v- Jelic** [2010] IRLR 744 that a tribunal is not precluded, as a matter of law, from holding that it would be a reasonable adjustment to create a new job for a disabled employee if the particular facts of the case supported such a finding.
48. In the circumstances of this case the Tribunal has considered whether or not it would have been a reasonable adjustment to put the Claimant into a post without her making an application and where she met the minimum essential criteria of the role.
49. The Tribunal accepts Ms Hick's submissions that it was not the pcg complained of by the Claimant as part of this claim that the policy to require an application placed her at a substantial disadvantage compared to non-disabled persons. That might, however, be a difficult distinction for a layperson.
50. However, more importantly, the Tribunal concludes that it would not have been a reasonable adjustment for the Respondent simply to place the Claimant into a vacant position in the circumstances of this case, the nature of the Respondent's organisation and its operational needs.

51. The Respondent operates a Career Transition Service that assists employees to find suitable alternative employment who are unable to fulfil their contractual roles, for example due to sickness, disability or being at risk of redundancy.
52. The evidence was that at the material times there were around 180 displaced employees looking for jobs within the CTS, with 60 of those being referrals to provide support looking for jobs, and 50 of those 60 referrals being cabin crew. The referrals included disabled individuals.
53. It is the Tribunal's conclusion that it was not a reasonable adjustment for the Respondent in the circumstances of this case to place an individual into a position where there may be other interested parties within the displaced staff and more particularly other disabled employees to which the potential for positive discrimination would also apply. If the Respondent simply placed one individual into a post, particularly without an application, it would create difficulties with other employees within the CTS process. As a consequence, the Respondent's reasonable policy is to invite applications.
54. The Claimant applied for two positions of Cabin Safety Partner and Customer Service Team Leader. On the evidence received by the Tribunal it finds on balance that the Claimant did not meet the minimum essential requirements. Under the Respondent's 'two ticks' policy, the Claimant would only be guaranteed an interview if the minimum job requirements are met. The Tribunal refers to the **Wade** case above and that it is not reasonable to require an employer to disapply the essential elements of a job.
55. In addition, but in a much more minor sense, the Tribunal received no evidence that even if the minimum requirements were met, the Claimant was likely to have been offered or have been successful in those applications given potential other candidates within the CTS process.
56. There was no evidence before the Tribunal that the Claimant's disability affected her ability to make effective applications for the posts.
57. Therefore, it is the Tribunal's conclusion that it was not a failure to make a reasonable adjustment by the Respondent not appointing the Claimant to those roles.
58. With regard to the temporary ground placement position into which the Claimant was placed, that was not an existing role. It was of itself a reasonable adjustment by the Respondent to keep the Claimant in paid work and to maintain 'job fitness'.
59. Ms Brew's evidence was that the Claimant's duties amounted to 10% of the Customer Services Representative ("CSR") role (the closest position to the duties that the Claimant was undertaking). The Claimant argued that it was more. The Tribunal concludes that whatever percentages apply, it was a low amount of the overall ground duties, fell far short of the complete ground side duties of the CSR role and there were no air-side duties being undertaken at all by the Claimant.

60. The Tribunal concludes that although, as a matter of law, a reasonable adjustment could be to create a new job for a disabled employee, equally there is no obligation on an employer to create a specific post which is not otherwise necessary where the particular facts of the case do not support such findings (see for example **Tarbuck -v- Sainsbury's Supermarkets** [2006] IRLR 664, EAT).
61. In the circumstances of this case the Tribunal concludes that it was not a reasonable adjustment for the Respondent to create a permanent role for the Claimant undertaking the temporary ground placement functions to the extent that she was, which would effectively be requiring the Respondent to disapply permanently essential elements of the job.
62. The CSR posts came up for potential appointment in September 2015. They were advertised, but as the Tribunal has concluded, it would not have been a reasonable adjustment for the Respondent simply to place the Claimant into one of those positions without at least an application and perhaps an interview.
63. The CTS scheme was a reasonable method of assisting redeployment into suitable alternative employment. The Claimant did not apply for the CSR position. The Tribunal concludes that the Claimant had potential access to information and personnel that would have enabled an application to be made. The Tribunal also concludes that the Claimant had a reasonable opportunity to apply. As the Tribunal has stated, on the evidence the Claimant's disability did not affect her ability to apply for posts. Therefore, the Tribunal concludes that there was no failure to make a reasonable adjustment by the Respondent in respect of the CSR positions.
64. With regard to the Cabin Crew Trainer position, it became available around December 2015 through to 2016. The Tribunal concludes that it is likely that position would have been advertised for a minimum of two weeks and highly likely it would have been longer given the Christmas period 2015. The deadline date for applications was 04 January 2016. The Claimant was aware at a meeting on 01 December 2015 of the termination date of her employment of 01 January 2016 and received written confirmation in the termination letter, which at the latest was with the Claimant by 23 December 2015.
65. The Claimant did not make any detailed enquiries into that position until 10 pm on New Year's Eve, although she raised it the day before in her appeal letter. The Respondent sent an email to the Claimant on 01 January 2016 recommending her to apply for the position or to contact the Campaigns Manager.
66. The Tribunal concludes that an extension of time for the Claimant to apply for the position would not have been required as an adjustment because of the Claimant's disability. There is no evidence, as the Tribunal has found, that the Claimant's ability to search and apply for positions was affected by her disability. The Tribunal has received no evidence that there was any impediment in her applying for that position because of her disability.

67. The role was advertised over a reasonable period of time and therefore it is the Tribunal's conclusion that it was not a failure to make a reasonable adjustment by the Respondent in the circumstances by not extending either the application period or the Claimant's period of employment.
68. To reiterate, it is the Tribunal's conclusion that it would not have been a reasonable adjustment simply to place the Claimant into a post without an application or an interview. This is particularly so for the training position because there is no evidence in front of the Tribunal that the Claimant would have fulfilled the minimum essential criteria and in addition, there was some evidence to indicate that the post was *in addition to* other flying duties.
69. Therefore, overall, it is the Tribunal's conclusion that the Respondent has not failed in its duty to make reasonable adjustments.
70. It follows from that conclusion that the discrimination arising from disability claim also fails.
71. The Claimant's dismissal was unfavourable treatment and was something arising from the Claimant's disability. The analysis leads to whether or not the dismissal was objectively justified by the Respondent.
72. The Tribunal concludes that it was clearly a legitimate aim for the Respondent to adopt safety requirements with regard to the operation of cabin crews. It is obviously a non-discriminatory, essential and indispensable aim. That objective is sufficiently serious to justify limiting a fundamental right.
73. It is a proportionate means of achieving that aim for the Respondent to require Cabin Crew to fulfil their essential contractual duties. That measure was appropriate and necessary. The means are clearly rationally connected to the objective and were no more than necessary. The fact that the Claimant could not undertake the job for which she was contracted, the assistance of the CTS service, the reasonable adjustments that were made by the Respondent and the conclusion by the Tribunal that the Respondent did not fail in its duty to make reasonable adjustments, leads the Tribunal to conclude that the treatment of the Claimant was a proportionate means of achieving a legitimate aim.

Employment Judge Freer

Date: 29 October 2018

ANNEX 1

CAST LIST

Charlotte Behzadifar (C)	Mixed Fleet Cabin Crew
Jacqueline Quamina (JQ)	Occupational Health Advisor
Jonas Pettersson (JP)	BA Customer Services manager, C's line manager
Mairead Brew (MB)	BA Inflight Business Manager (appeal manager)
Mark Dean (MD)	BA Inflight Business Manager
David Hoade (DH)	Career Transition Service
BAHS	British Airways Health Services department (occupational health)
CTS	Career Transition Service

CHRONOLOGY

2014

13.02.2014	Offer of employment [75] - T&Cs [75-83]
28.03.2014	Employment began: Mixed Fleet Cabin Crew [75-83]
December 2014	Became unfit for flight duties
05.12.2014	Referral to BAHS (1) [85] - Asking: (1) what adjustments would recommend; (2) whether fit for alternative duties; (3) whether there is a health condition
21.12.2014	Absent from work – sick leave

- *Since this date the Claimant had been continuously incapable of carrying out her role*
- Sickness absence was managed under the Managing Absence Procedure, set out in BA's Our Colleague Guide

31.12.2014

BAHS Assessment over phone [86]

2015

02.01.2015

First BAHS Assessment (1) [86-87]

05.01.2015

Grounded for Health Reasons [88]

- Enclosed: (a) a supply of Attendance Forms and (b) an Overview Booklet on relevant administrative points when grounded; (c) guidelines on how to complete Attendance Forms

06.01.2015

Referred for Ground Duties

- BA Referral Letter to Customer Service Programme [89]
- BA letter to C [90-92]
- Due to start 13.01.2015
- Working:
 - o 2 weeks for 4 days at 6 hours a day
 - o 2 weeks for 5 days at 6 hours a day

13.01.2015

Start of Ground Duties [90]

04.02.2015

Second Assessment by BAHS (2) [92-93]

- Recommended continuing ground duties
- Plan: 8 weeks at 3 alternate days per week at 6 hours per day

14.02.2015

Invitation to Long Term Absence Review Meeting [94-95]

- Sent section 2.7 from Our Colleague Guide [95c]

24.02.2015

Absence Review Meeting [96-98]

- With Jonas Pettersson
- Outcome letter [96-98]
- Benefit from continued ground duties for
 - o 8 weeks at 3 alternate days per week at 6 hours per day
- Confirmed "*there is no further support you feel we currently can offer you to aid your recovery outside of what is currently being done*" [97]

- 24.02.2015 Referral to BAHS [99-101]
- Asking: (1) what adjustments would recommend; (2) whether fit for alternative duties; (3) whether there is a health condition
- 05.03.2015 Due to see own Specialist
- 06.03.2015 BAHS consultation with C [101]
- 09.03.2015 Email from C to JP re condition [99B-99C]
- 11.03.2015 Third BAHS Report (3) [101-103]
- Based on consultation on 11.03.2015
 - Continues to experience symptoms
 - Now been seen by a Consultant and commenced investigations but no improvement yet [101]
 - Difficulty managing 3 days per week and has suggested a reduction to 2 days
 - Plan: Continue ground duties of 3 alternate days per week at 6 hours – for 4 week
- 11.03.2015 Email from JP to C re condition and diagnosis [102A]
- JP: I *“hope that your appointment with your doctor was successful. It would seem, though, that the only option at this time for you if you are unlikely to manage 3 days of work a week is indeed for you to call in sick”*
- 14.03.2015 C reply to JP re condition and diagnosis [102B-102C]
- Thanks him for replying on his annual leave
- 29.03.2015 Email from JP to C [102E]
- Need to arrange a 3 month long term absence review meeting
 - Suggests referral to CTS
- 30.03.2015 Emails between C and JP re condition and diagnosis [102G-102J]
- C: *“I am chasing up the letter that explains more about my situation as we speak as I have still not received one.”* [102G]
 - C: *“I would love to go back to flying and that is what I really hope to do if I am able to!”* [102G-102H]
- 07.04.2015 Email from C to JP [102K]
- C: would like to wait a little longer before involves CTS

- C: *My letter from the doctor should also be ready for collection today so I will update you on that* [102K]
- 13.04.2015
- Emails between C and JP [102L-102O]
- JP enquiring as to whether C received the letter she was waiting for from doctor [102L]
 - C: *“My letter was not what I had hoped as there are a few errors with some of the content... We also believe I also have a more complex functional disorder within affecting my stomach and I am continuing tests at UCH London and am also waiting an appointment with the ME specialist. I will scan you a copy of my letter... and I will update you on my returning”* [102O]
- 17.04.2015
- Emails between C and JP [102Q]
- C: Had meeting with Jacqueline and provisional diagnosis was I will not be able to fly again. However *“I was told that I should wait until I see the specialist for a proper diagnosis”* [102R]
 - C: *“However “I was told that I should wait until I see the specialist for a proper diagnosis. I do not have date for this yet”* [102R]
- 19.04.2015
- Invitation to Long Term Absence Review Meeting [102S]
- Need to meet for another long term absence review meeting (Our Colleague Guide, section 2.7)
- 23.04.2015
- Notes: JQ anticipates diagnosis in 1-2 months [102AA]
- If this is the diagnosis will not be able to continue flying
 - JQ recommends involving CTS
- 24.04.2015
- Absence Review Meeting
- With Jonas Pettersson
 - Notes at [102BB-102EE]
 - Diagnosis of possible ME [102CC]
 - Even 3x alternative days difficult to achieve
 - Referred to BA's Career Transition Service (with C's approval) [102EE]
 - *“JP asked if any questions or concerns. CB stated no”* [102EE]
- 24.04.2015
- C Registered with Career Transition Service [222-223]
- JP registered C with CTS following meeting [105]
- 27.04.2015
- CTS email to C [223], [228]

30.04.2015	Absence Review Outcome Letter [103-105] <ul style="list-style-type: none">- No diagnosis or prognosis yet and not possible to ascertain a timescale for return to contractual flying duties [104]- “<i>You believe you will not be able to return to flying role</i>” as (a) long hours can cause exhaustion and (b) possible relapse could be dangerous [103]- Now appropriate to consider if you are unable to undertake suitable alternative employment within BA [105]- Registered with Career Transition Service- Discussed the courses and support offered by CTS
01.05.2015	CTS email to C [228]
08.05.2015	CTS meeting with C [228-229]
12.06.2015	Referral to BAHS [106-108] <ul style="list-style-type: none">- Now received a diagnosis- Asking whether able to return to flying; (2) what R Adj recommended; (3) whether fit for alternative duties; (4) whether covered by EqA
14.05.2015	C sent updated CV to CTS [229]
15.05.2015	C sent updated CV to CTS [233]
18.06.2015	BAHS meeting [107]
20.05.2015	CTS suggested further changes to CV [229], [236]
22.05.2015	CTS suggested further changes to CV [229]
26.05.2015	C applied for Cabin Safety Partner role [267a], [267d] <ul style="list-style-type: none">- Ultimately rejected on 02.06.2015- She was told that she received the words “not met” against every criterion [CB§25]
09.06.2015	Email from CTS to C: send updated CV and meet at Waterside on 17.06.2015 [229]
14.06.2015	CTS: C sends updated version of CV to DH [240]
17.06.2015	CTS meeting with C [230]

18.06.2015 CTS (DH) emailed with some further comments on CV [230], [243]

22.06.2015 Fourth BAHS Report (4) [106-108]
- Appointment with specialist on 08.07.2015
- Unable to provide any further information until this meeting

05.07.2015 Referral to BAHS [109-111]
- *"She is eager to return to her flying role"* [109]

09.07.2015 BAHS telephone consultation with C

09.07.2015 Fifth BAHS Report (5) [109-111]
- Based on a review telephone consultation with C on 09.07.2015
- *"Regrettably her situation remains unchanged therefore unable to return to contractual flying duties"*
- Not possible to ascertain date for return to contractual duties
- It is now a management decision how you wish to proceed

10.07.2015 Report by Dr Bansal [42-43]
- C had developed *"very marked fatigue for the last 18 months, accompanied by a delayed post-exertion malaise, non-restorative sleep"*
- Concentration and short-term memory were impaired

31.07.2015 C applied for Customer Service Team Leader role [267c], [267e]

05.08.2015 Invitation to Meeting to Discuss Absence from Contractual Role [112-113]

07.08.2015 CTS (DH) emailed C: had not heard from her since June [230]

10.08.2015 CTS arranged 121 meeting for 13.08.2015 [230]

10.08.2015 Application for Customer Service Team Leader role unsuccessful [267a], [267e]

12.08.2015 CTS: list of applicants rejected for the TM role [244-245]

13.08.2015 CTS: C failed to show for meeting [230]

- 16.08.2015 C informed R that unable to attend meeting on 26.08.2015 [115-116]
- 17.08.2015 Reply from JP: arranging call to discuss [117-118]
- 17.08.2015 CTS: C seeking feedback from rejected application [246]
- 19.08.2015 CTS: Email from Mark Rainbow to C – will assist you in obtaining feedback when back in office [247]
- 19.08.2015 CTS 121 meeting at Waterside [230-231]
- 21.08.2015 C cancelled meeting again [125]
- *"I have not yet found a ground colleague and would therefore like to cancel as specified previously."*
- 25.08.2015 Email from JP checking to see if anything changed and C could now make meeting on 26.08.2016 [126]
- C confirmed that cannot go ahead [127]
- JP reply: will send out a new invitation [128]
- 25.08.2015 Second Invitation to Meeting to Discuss Absence from Contractual Role [130]
- To be held on 14.09.2015
- 25.08.2015 Invitation Absence Review Meeting [139-140]
- Due to be held on 14.09.2015 at 15.00
- 25.08.2015 Absence Review Meeting: time changed to 11.00 [139-140]
- 26.08.2015 Request to move meeting to morning due to medical appointment [132]
- JP reply: what time have to leave? [133]
- C: by 1pm [135]
- R Adj: JP: looking into it – what medical appointments do you have booked for Sept/Oct [136-137]
- 26.08.2015 JP Email [138]
- Making arrangements for meeting to be held at 11am
- *"I will be liaising with the necessary department so you don't need to continue reporting for Ground duties as of today... You will remain with CTS... you are able to focus more on securing an alternative placement"* [138]

26.08.2015 CTS: Email from JP to CTS asking what more he can do to support C [248-249]

26.08.2015 Sixth BAHS Referral (6) [141]

26.08.2015 Sixth BAHS Report (6) [142-142]
- Not possible to ascertain date for return to contractual duties

27.08.2015 Seventh BAHS Report (7) [143-144]
- C made contract to confirm that she is fit and able to continue with her grounded duties”

27.08.2015 CTS: Response to JP re what support he can offer [252-254]

27.08.2015 CTS: email from C [231]
- Apologising for not sending CV; had been busy applying for roles

01.09.2015 JP to CTS: same restrictions as earlier (3 days / week (alternate days) at 6 hours / day) [255]

03.09.2015 CTS: DH emailed C to see if any further support could be offered [231]

08.09.2015 Dr Mullick Letter [44-45]

14.09.2015 Absence Review Meeting
- Notice of termination of employment: 13.10.2015

14.09.2015 JP chasing Mark Rainbow re Feedback for C [259]

15.09.2015 Mark Rainbow to JP re C’s Feedback [261-263]

16.09.2015 Email between C and Mark Rainbow re Feedback [264]

21.09.2015 Absence Review Meeting Outcome [145-148]
- *“Although you feel more positive about returning to contractual flying role there are at this time no clear indications to confirm when you might be able to do so”* [145]
- Unable to return to contractual role
- Unsuccessful in securing alternative employment
- Notice of termination: 13.10.2015

- 23.09.2015 CTS: C emailed asking for interview prep [231]
- DH responded with times and dates on 28.09.2015
- 24.09.2015 Exit Letter [149-154]
- 26.09.2015 Email from JP [155-156]
- "I would like to set up another referral for you to BAHS"
- 27.09.2015 C reply: a BAHS consultation would be good [157]
- I have more medical appointments as only recently diagnosed
- 28.09.2015 CTS: DH offered dates for interview prep session [231]
- 29.09.2015 JP reply: set up referral [158-159]
- 29.09.2015 BAHS Referral [161]
- October 2015 Started working as a Student Engagement Assistant at the University [72]
- 01.10.2015 Ground Support Hub: C fit for restricted flying duties as of 05.10.2015 [160]
- 01.10.2015 Eighth BAHS Consultation and Report (8) [161-163]
- C says fit to return to flying
- C "*informs me that her underlying medical condition is stable and she has reached a level of fitness to return to restricted flying duties*" [162]
- Plan: Maximum 6 day trips; Maximum: 3 sectors
- 02.10.2016 Email from C to JP [164-165]
- "*I saw BAHS yesterday and it was agreed that I will try and return to flying and they will put me on the next training course*"
- "*Will be calling in fit on Monday as agreed by BAHS*"
- 05.10.2015 Failed to report for ground duties
- Referred to in letter at [191]
- 09.10.2015 Termination Deferred [173-174]
- Letter from JP
- Placed on a RTW course between 3 and 13 November 2015 [174]
- Expected to return to Grounds Duties hosting

- 12.10.2015 Email from C to JP [174(a)]
- Was "*under the impression that I would spend the time that I was not completing my ground duties to attend all my hospital appointments before I return to flying*"
 - "I was told on Friday by Jacqueline that I would need to go back to completing ground duties but I did not agree 5 days per as week as I already have appointments booked"
- 12.10.2015 Reply from JP [174(b)]
- Was told that you are now fit enough to increase hours to 5 days a week at 6 hours per day, which is still a reduced schedule
 - Host managers will accommodate appointments
- 15.10.2015 Clarification email from JP to C [174(c)]
- Host managers have confirmed that any medical appointments you need to attend can be given medical leave for, if they are at times when you otherwise would be expected to report for ground duties
- 15.10.2015 CTS: DH emailed C to ask if wanted to meet [232]
- 16.10.2015 Dr Mullick Letter [46-47]
- C had restarted university
- 16.10.2015 Letter from Chronic Fatigue service [48-49]
- 18.10.2015 C Response to Clarification email from JP to C [174(d)]
- Does not feel able to return to 5 days a week as suggested
- 19.10.2015 Email from JP to C [174(e)]
- As your line manager I am responsible for making those decisions for you and not BAHS
 - Granted request for unpaid leave from 20.10.2015 to 02.11.2015
- 23.10.2015 JP Notes re phone call with C [174(f)]
- 26.10.2015 Email from JP to C [174(g)]
- Late October 2015 Started working as a Student Helper at the University [72]
- Working 13 hours a week (Mondays and Tuesdays) at the campus

- Job ended in April 2016
- 03.11.2015 Due to Attend return to work course - failed to attend
- 03.11.2015 [174(h)] Email from C to JP: called in sick with injured knee
- 09.11.2015 Email from C: not fit to fly [174(i)]
 - Had a cardiology appointment and "*my heart rate was quite high*"
- 10.11.2015 Referral to BAHS [175]
 - "*Still on sick, and have now advised about a third medical issue where they have told me they are not fit to fly as condition needs to be investigated*"
 - "*Please can you advise if the crew member is able to return to full flying contractual role within the next 4 weeks*"
- 11.11.2015 Ninth BAHS Consultation and Report (9) [175-177]
 - C informs of a new underlying medical condition which is likely to impact on her ability to return to contractual flying duties
 - Highly unlikely specialist investigations will be completed within 4 weeks
 - Unable to provide timescale for return
- 13.11.2015 BAHS Referral [178]
- 13.11.2015 Tenth BAHS Consultation and Report (10) [179-180]
 - Likely to be covered by EqA 2010 but is a legal issue not a medical one
- 22.11.2015 Referral to BAHS [183]
 - C "*has called in fit of her own initiative, which is of great concern to me if it is a rushed decision*" [183]
- 24.11.2015 Email from C to JP [181]
 - C phoned in as fit as well enough to do ground duties, just not well enough to fly
 - Have received a letter inviting to meeting due to being absent for more than 8 days
- 25.11.2015 BAHS telephone consultation with C
- 27.11.2015 Eleventh BAHS Consultation and Report (11) [184-185]

- Unable to provide timescales for a return to flying duties and continuation on ground duties is a management decision based on operational needs
- 01.12.2015 BAHS telephone consultation with C
- 01.12.2015 Attendance Review Meeting
- Referred to in letter of 09.12.2015 [189-195]
 - Set termination date for 01.01.2016 as this would allow time to find suitable alternative employment [193]
- 01.12.2015 CTS: Follow-up email from DH to C, asking if she wants any more support from CTS [232]
- 02.12.2015 Twelfth BAHS Consultation and Report (12) [186-187]
- *"She reports feeling a lot better in herself and is keen to return to flying duties as from 7 December 2015 with support of RNF 5:3"*
 - Plan: 8 hours; max 3 sectors for 1 month; no stand by for 1 month
- 03.12.2015 Confirmation from BAHS: C fit to fly from 06.12.2015 [188]
- Emails between JP and JQ
 - JP has found a RTW course C could undergo on 06.12.2015
- 04.12.2015 Scheduling team tried to contact C to arrange RTW course [193]
- Could not reach her
 - JP also tried to contact C to book her on to course on 06.12.2015 – no response
- 05.12.2015 Response from C: adjustments would need to be made for her to attend a RTW course [193]
- C said that had been preparing to RTW on 07.12.2015 not 06.12.2015
- 06.12.2015 JP contacted CTS re C [193]
- 06.12.2015 Failed to attend return to work course (for second time)
- 07.12.2015 CTS reply to JP: CTS clients get priority for interview but only if they meet the criteria for the role; there is no guaranteed interview scheme in place [194]

- 07.12.2015 BAHS confirmed C was fit to fly
- On C's case
 - No evidence to support this finding
- 09.12.2015 Attendance Review Outcome Letter: Notice of Termination [189-195]
- In meeting on 01.12.2015 you advised that further investigations were due to take place in January / February 2016 [190]
 - Termination date set for 01.01.2016 [195]
 - "*This allows you a further 3 weeks to seek alternative employment*" [195]
- 17.12.2015 Exit Letter [196-201]
- 30.12.2015 Appeal against dismissal [202-203]
- Via email to JP (absent on leave at that time)
 - (1) Feel no reasonable adjustments have been made since November 2015
 - (2) Believe has received conflicting advice about fitness to fly and is confused herself about whether she is fit to fly
 - (3) Has found a ground role that would "*suit my disability and ensure my training with BA does not go to waste*". The deadline is 04.01.2016 but will not be allowed to reply post-termination date – asking that termination date be postponed to allow this to happen
- 31.12.2015 Email from C to Mark Dean [204-205]
- Seeking help / advice: would like to extend termination date to allow time to apply for role
 - JP away on annual leave
- 2016
- 01.01.2016 Effective Date of Termination
- 02.03.2016 Invitation to Appeal Hearing [206]
- Appeal to be held on 12.02.2016
 - To be heard by Mairead Brew
- 11.02.2016 Notes for Appeal Hearing [212-213]
- Held by Mairead Brew
- 26.02.2016 Appeal Against Dismissal Dismissed [214-221]

-end-