EMPLOYMENT TRIBUNALS

Claimant: Mr A Strong

Respondent: Parker Hannafin Manufacturing Ltd

Heard at: Newcastle Employment Tribunal
On: 8-11 July 2024 – evidence and submissions
6 December 2024 - deliberations
Before: Employment Judge Jeram, Ms S Donn and Mr G Gallagher

Representation:
Claimant: Mr Parsons Munn of Counsel
Respondent: Mr M Gordon of Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the claimant's complaints:

1. Of a failure to make reasonable adjustments and to provide an auxiliary aid pursuant to ss.20 and 21 of the Equality Act 2010 are not well founded and are dismissed;

2. Of a failure to notify the claimant of the outcome of his flexible working request within the statutory decision period pursuant to s.80G Employment Rights Act 1996 is not well founded and is dismissed.

REASONS

1. By a claim presented on 20 October 2023, the claimant complained that the respondent had failed in its duty to make reasonable adjustments and/or provide an

auxiliary aid and furthermore it failed to notify the claimant of the outcome of a flexible working request within the statutory decision period.

2. The Tribunal heard from the claimant and the respondent from Alison Rishworth (Human Resources Manager) and Jacqueline Foster (Division Operations Manager).

3. The Tribunal had before it and agreed file of documents consisting of 415 pages. It received an opening skeleton argument submitted on behalf of the claimant together with written submissions made on behalf the respondent.

4. Significant refinement of the claimant's case took place at the outset of the hearing, leading to an agreed list of issues as set out in the annex to this judgement; the Tribunal is grateful to both Counsel for the care and pragmatism with which they conducted their respective cases.

5. No specific reasonable adjustments to the Tribunal procedure were sought by either party, but the Tribunal bore in mind the communication difficulties on the part of the claimant set out in the reports before it when assessing his evidence.

Factual Background

6. The claimant commenced employment in 2012 as a production operative at the respondent's site in Birtley. The respondent manufactures at the site filters which are used across a range of industries, but primarily for the food and beverage and biopharmaceutical industries. There are five production rooms at the site, described as 'Value Streams', each numbered 0 to 4. Each Value Stream is filled with machinery for different production processes. Operators are assigned a task, or workstation, for each shift. They are required to move between Value Streams depending on the demands of the business.

7. Since the commencement of his employment the claimant worked in Value Stream 1 (prefilters). Tasks in Value Stream 1 include working on the pleating machine, as well as the line feeding machine. The claimant worked on both machines, since he commenced work, although predominantly on the pleating machine. There are 12 workstations along the production line in Value Stream 1. The production process operates as a chain or as the respondent describes, a 'snake', so that the colleagues on the workstations need to work in time to ensure that the production is efficient and continuous. If one of the necessary workstations in the 'snake' is missing, production halts and efficiency is negatively impacted and/or completion of jobs in accordance with business needs is jeopardised because of a 'bottleneck' at certain workstations. Of the 12 workstations in Value Stream 1, two are used only occasionally depending on the type of order being met.

8. Colleagues on Value Stream 1 worked in two groups, on a two-shift rota working one week from 6am until 2pm (the 'early shift') before swapping shifts on the following week to work 2pm until 10pm (the 'back shift'). Colleagues received a

shift allowance increasing their basic pay by 10% on the morning shift, and 20% on the evening shift.

9. On his own evidence, and contrary to his pleaded case, the claimant was trained to, and could, work confidently and safely on any piece of machinery in the workplace, however complex. Despite his flexibility in operating all machinery, the claimant was never, in fact, required to work across different Value Streams. From 2012 until March 2023, the claimant raised no concerns about his ability to carry out his work.

10. In or around 2019, the respondent agreed to a contractual arrangement with about one of the colleagues to work a permanent early shift in Value Stream 1. This caused an imbalance in the number of staff working in Value Stream 1, since an extra member of staff worked on one shift rotation compared to the number of staff one the opposite rota, leading to difficulties ensuring that the production processes are continuous from one shift to the next. The contractual arrangement was possible for the respondent, it having been entered into at a time when production orders were relatively high and workforce shortages were supplemented by the use of temporary staff.

11. Since 2021, the claimant has held a voluntary position as a Unite trade union representative. He enjoys his role, which requires him to address with management matters on behalf of colleagues who lacked confidence to do so themselves, attend monthly management meetings, deal with general workplace issues including attending grievance and disciplinary hearings. The tasks require the claimant to deal with the change to his routine at very short notice; he could receive five days and under notice of the meeting and on one occasion attended a meeting in less than two days' notice. The claimant is required to deal with last-minute instruction, including on an urgent basis. Part of his Unite role is to act as the employee's health and safety representative. When asked about the impact of being asked to leave a pleating machine in order to attend to his trade union duties the claimant stated *"you can just push a button to stop and walk away".*

12. From around mid-2022, the respondent suffered a downturn in orders, which it met initially by curtailing its use of temporary staff.

13. In May 2022, the claimant took an extended period of absence following the birth of his twin children, the health of one of them placing significant demands on the claimant. He took paternity leave followed by sick leave, his fit notes stating that he was experiencing anxiety and mental health issues.

14. Between May 2022 and September 2022, the claimant was in regular contact with Alison Rishworth (HR Manager); he discussed the challenges he faced at home following the birth of his children but did not raise any concerns about work or the level of support he was receiving.

15. In a phone call on 17 May 2022, the claimant raised the possibility of a diagnosis of autism spectrum disorder (ASD) with AR and asked her not share that information. AR respected that request.

16. On 11 August 2022, the claimant attended a meeting with AR and shift leader Steve Swindon. The claimant was anxious about returning to work given the difficulties he was facing at home. He was concerned about money, so the business extended the claimant's company sick pay entitlement on a discretionary basis to ensure that he did not suffer a reduction in pay. The claimant asked if the business could accommodate him returning to work on morning shift only, because he believed this would assist his care of his son. It was agreed this could be accommodated as a temporary arrangement, to be reviewed 3 to 4 months after his return to work.

17. A range of other support mechanisms were agreed to assist his return to work, including keeping his mobile phone with him whilst working, uncapped arrangements for taking time off for medical appointments and continuing to receive a 15% shift allowance. The claimant did not raise his possible ASD diagnosis or suggest any adjustments were required as part of his phased return to work or otherwise.

18. In advance of the claimant returned to work, AR arrange for a briefing note to be sent to all team leaders, seeking their understanding of the claimant's difficult time at home, respecting privacy, and giving him time to get back to work. On 14 September 2022, the claimant returned to work, and he continued to have regular discussions with the shift leaders about his support at work. He did not contact AR to request any further or additional support.

19. The claimant returned to work in September 2022.

20. On 6 December 2022, the claimant submitted a grievance alleging that the respondent had failed to support him. He stated in his grievance that at the meeting on 11 August 2022, the respondent had agreed at his request that he be able to work a permanent early shift to accommodate his and his son's needs.

21. On 15 December 2022, the claimant was again absent from work due to sickness. The respondent extended company sick pay for the claimant. He did not return to work until 19 June 2023.

22. In the meantime, the claimant's grievance was investigated. Several interviews were undertaken, including that of AR. AR confirmed that she had not refer the claimant to Occupational Health because at the time the claimant was content with the support he was obtaining by his GP and because the claimant had not let her know that his ability to return to work was impaired.

23. On 11 January 2023, Occupational Health reported that the claimant reported severe anxiety as well as depressive symptoms, the background to which included

the birth of his twins and the significant health issues of one of them. The report stated that the claimant reported to the physician typical features of autism spectrum disorder which he said were first recognised in childhood. The physician concluded that the claimant was unfit to be working in his mental symptoms of anxiety/depression along with a heightened impact of his autism with the reasons for this.

24. On 15 February 2023, the claimant received an outcome to his grievance. It confirmed that the claimant had received significant support during his absence and subsequently, but no formal return to work meeting had been completed. An Occupational Health report would be obtained. The claimant did not appeal the outcome.

25. The claimant was provided with a copy of the flexible working policy and advised that he had been referred to Occupational Health and invited to a meeting.

26. On 1 March 2023, a welfare meeting took place between the claimant AR and manager CB. The claimant confirmed he had been diagnosed with high functioning autism. He said he needed structure, that he struggles with the change in routine and needed to know a job inside out. He confirmed he had been off work to meet the needs of his son. He presented AR and CB with a flexible working request, informing AR and CB that he would like the respondent to accommodate a permanent early shift to accommodate the needs of his son.

27. In his request for flexible working, the claimant confirmed he believed that both he and his son were disabled persons, and that the claimant was disabled by reason of his of his autism. The request was said to accommodate the need for reasonable adjustments for both him and his son.

28. On 2 March 2023, the claimant emailed the respondent notifying them that his official assessment and diagnosis, including suggested reasonable adjustments from the NHS autism service which would be received in the coming weeks.

29. On 8 March 2023, Occupational Health sent a letter to the respondent following a telephone consultation with the claimant. The physician confirmed that the key to assisting an employee with ASD is an understanding that they need structure and routine and predictability of shifts in work tasks. In the claimant's case, he added, he will also need considerable flexibility due to his son's medical issues.

30. The respondent confirmed, at the claimant's request, that is contractual sick pay was unaffected.

31. On 4 April 2023, the claimant sent to the respondent a report from Autism In Mind (AIM) a service providing support for individuals. This report stated that in the workplace, the claimant masks most of the time *'to hide his communication difficulties'.*

32. The report stated that the claimant identified with having a monotropic mind. The report continued:

'A monotropic mind gives its undivided focus and attention to a task and will work on that task until it is complete. This is one of the big strengths of autism. However, being asked to transition from one task to another when in what is called a 'flow state' can not only be traumatic for someone who is autistic, it can lead to a melt down or shut down.

Andrew does not cope well when being asked to transition from one task at work to another without enough time for him to process and then action that change. When asked to change without prior notice Andrew suffers from autistic inertia making it difficult for him to transition from one task to another without it causing him great difficult distress.

Andrew has always masked that distress, but he would like to not be put into a position where he is feeling so stressed now that he understands why he feels so stressed and anxious when he is told to stop doing something in mid-flow of a particular job.

Andrew would benefit from being able to do the same job from beginning to end wherever possible and if changes necessary being given as much notice as possible so that he can make the transition as smoothly as possible to him. Andrew stated that he can confidently and safely use any piece of machinery in the workplace, however complexities. The problem arises when he is not given the time he requires to move from one piece of machinery to another. Unexpected changes can be anxiety provoking for Andrew.'

33. Elsewhere, the report stated that, in the claimant's case, his expressive language was much better than his receptive language meaning that the claimant finds it easier to express himself that he does receiving communications. It stated that he *'can find it hard to initiate conversations with other people. This is especially so when it involves something that concerns him'*. It stated that the claimant had a hypersensitivity around noise. It said he *'finds being in a busy working environment challenging. He can and does cope with that environment, but it leaves him with burnout at the end of his shift and unable to do anything other than rest after leaving work'.* The report suggested a number of measures to assist the claimant in his working environment, including the purchase of noise cancelling headphones, the author adding that the claimant himself *'did not think that would be possible because he works in a very controlled environment for very good reasons'.*

34. The respondent having earlier informed the claimant that his flexible working request was on hold pending receipt of the report from AIM and the receipt of a Occupational Health report, the respondent arranged a welfare meeting on 18 May 2023. The claimant was accompanied by his trade union representative. An occupational health report dated 24 April 2023 recorded the claimant's current

position including that he was waiting to hear from the employer about flexible working and other requests he made.

35. At the meeting on 18 May 2023, the claimant confirmed that he did not feel well enough to return to work, the two main issues being ongoing personal pressures and work issues. The claimant provided an NHS diagnostic assessment for Autism Spectrum Disorder. It set out differences in social and emotional communication and interaction. In relation to restricted, repetitive patterns of behaviour, interests and activities, the report stated that the claimant can *'find change very difficult and struggle with new events or environments. It can be difficult for you to move between places, or tasks without time to process change and prepare yourself. You benefit from having predictable routines and find it easier if you have notice of upcoming changes. It can also help if you have information in detail about what the change will be, when it will occur, what the new place looks like, for example.'*

36. The report stated that the claimant has sensory sensitivities/differences which mean increases levels of anxiety and agitation when he experiences them including touch sound, environmental stimuli, texture and light. It stated the claimant can be *'distressed by loud, constant and high-pitched sounds and can experience responses to specific sounds around him. It may be useful to him to wear headphones and people should try to reduce the volume of noise where possible'.* The report recommended the claimant be provided time to prepare for changes to routines or ways of working; that regular shift patterns or flexible working hours may be helpful; that routine is important for people with autism, having shift patterns and working hours in advance where possible may also be helpful.

37. At the meeting, the claimant suggested the respondent *'stop the flexible working request'* that he had submitted *'and instead deal with [his] requirements through a formal request for reasonable adjustments'.* He stated he would list the reasonable adjustments he sought and submit that to them together with suitable dates suitable for his trade union representative for another meeting.

38. At the meeting, the claimant was offered a move to Value Stream 4 working 7:30am to 3:30pm. He was also asked to consider whether the two-shift pattern that he had been working in Value Stream 1 could meet his needs because it provided consistency and structure in line with the autism guidance. The respondent offered to discuss these options further at the next meeting.

39. On 22 May 2023, the claimant set out a list of reasonable adjustments he sought. These included: local temperature control; local noise level in the form of noise cancelling headphones; local lighting control; sensory aid; *'remain in the same familiar work environment without change to environment or routine'*; a designated safe space; assistance with communication; regular welfare check; a management support plan; flexitime as and when needed; immediate management to have training in autism; prompt decision-making and *'to continue to accommodate me to*

work a permanent 6-2 shift pattern in my current job role that best suits my needs with occupational and personal as a reasonable request in accordance with the respondent's policy and the Equality Act'.

40. A further meeting took place on 5 June 2023. At the meeting, the parties agreed that the respondent would be unable to make direct changes to the Value Streams, but it agreed to purchase for the claimant a set of noise cancelling headphones, light control safety glasses and a sensory aid to assist him at work. It agreed to identify a designated safe space, put in place a communication plan with line managers, ensure he had regular welfare meetings with an agreed autism mentor of its choice, put in place a management care support plan, arrange education and awareness of autism for the management team, and ensure prompt decision-making and responses. The respondent informed the claimant, in the letter that followed, that having undertaken discussions, his request for flexi time as and when needed to accommodate those occasions when he, he told them, might have an issue outside of work, leading to a 'melt down' that caused him to be late, so as to enable him to then work late to make up his hours, would be dealt with as sickness absence and supported by HR. He was reminded that the respondent had an Emergency Time Off for Dependents policy and a Parental Leave Policy for those occasions when he needed time off to meet the needs of his dependents.

41. In relation to the working pattern, the respondent reminded the claimant that he could return to his usual working pattern on Value Stream 1 on a two-shift pattern, noting that the claimant refused a permanent back shift, i.e. 2pm – 10pm shift on Value Stream 1, and also a permanent 7.30am to 3.30pm shift on Value Stream 4. The respondent informed the claimant that it could not accommodate the claimant's request for a permanent 6am – 2pm shift on Value Stream 1 because of its inability to reorganise work amongst existing staff in circumstances where there was already an operational imbalance between the two shifts. The claimant was informed that any appeal against this decision should be raised as a grievance.

42. On 8 June 2023, AIM provided a further report, in which it stated that the claimant had informed the author that the temporary change to shift pattern had been provided to meet his autistic needs. This was incorrect; it had been provided to the claimant as a temporary arrangement to assist his ability to manage his childcare needs. The report continued: *'A consistent working pattern doing the job that he is familiar with would provide Andrew with the right environment and routine and structure that would meet his needs'.*

43. The claimant returned to work on 19 June 2023.

44. Also in or around June 2023, the respondent operated a voluntary severance scheme with a view to reducing the number of permanent staff it employed. It reduced the number of permanent staff on Value Stream 1 from approximately 20 to 10 staff.

45. The claimant submitted a grievance, which was heard on 5 July 2023. His request for wireless noise cancelling headphones was rejected, the grievance officer finding no evidence of the need for wireless headphones. The grievance officer noted that a fire in the factory had affected his phased return to work, the details of which were provided verbally rather than in a written format. A mentor had been agreed, and a safe space had been allocated. She explained that the respondent had recently undergone a voluntary severance programme, meaning that an imbalance of employees on the two shifts in Value Stream 1 would exacerbate difficulties in efficient running of the business. She commented that it was surprising that the claimant's desire for a permanent shift of 6am-2pm in Value Stream 1 would support his needs, given that the effect of doing so would mean that he would have a different production leader each week, different team members each week, and his appointed mentor would only be able to work with him every other week. She confirmed that the single shift pattern of 2pm-10pm in Value Stream 1 remained available to the claimant.

46. The claimant appealed the decision, stating, amongst other things, that the rationale for the decision had changed, and asserting his belief that his absence, and recent accommodation, had had no bearing on the respondents efficient running of the business.

47. He submitted a third report form AIM in July, in which the author confirmed that the claimant had asked her to put in writing '*something'* regarding the use of wireless noise cancelling headphones. She stated she was confident that the claimant understood his own needs to know what kind of headphones worked best for him.

48. At the appeal hearing on 25 July 2023, the claimant was accompanied by his trade union representative. On 31 July 2023, the claimant received the outcome of his grievance appeal. The grievance appeal officer concluded that there had been no inconsistencies in the rationale provided to him for rejecting a permanent 6am-2pm shift on Value Stream 1, as alleged. The grievance appeal officer requested that a permanent 2pm-10pm position was advertised internally, with a view to finding a corresponding team member, allowing the respondent to offer him a permanent position in the early shift. He noted that the claimant required wireless headphones that played audio but concluded that the health and safety concerns presented by them were unacceptable. This is the first request the claimant had made to his employer for headphones with audio input. The claimant was informed that there was no further appeal from the decision. The advertisement was made; the respondent received no interest. The respondent approached the one colleague who was contractually entitled to work the early shift only to explore whether the arrangement could be revisited, again, to no avail.

49. Between 2 August 2023 and 18 April 2024, the claimant met with the respondent on 5 occasions in addition to those described elsewhere in our findings, to discuss and

agree the numerous adjustments that the claimant sought, which, together with dates and actions agreed, were recorded in meticulous detail.

50. On 6 October 2023, Occupational Health advised the respondent that the claimant sought to use headphones which play music. The physician noted the contents of the most recent AIM, adding the caveat that such headphones were *'fine, if they can be worn in a manner that does not compromise safety'.*

51. On the 20 October 2023, the claimant presented his claim to the Tribunal. That was the first occasion that the respondent learned that the claimant sought to work exclusively on the pleater machine in Value Stream 1 as a reasonable adjustment.

52. On 26 October 2023, the claimant submitted a second flexible working request. He sought a permanent early shift on Value Stream 1. The claimant preferred the matter to be dealt with by correspondence, so no meeting took place. On 6 December 2023, the claimant was sent an outcome. The respondent confirmed that it was unable to offer the shift pattern sought due to an inability to organise work among existing staff. It repeated that it believed the claimant's disability needs as stated in the professional/medical reports could be met by working a permanent late shift. He was reminded that an early shift on a different Value Stream was available.

53. The claimant appealed the decision on the same day, the basis of his appeal being that he did not believe the respondent's rationale and that it had not taken into account valid point that he had made. A meeting took place on 4 January 2024.

54. On 8 January 2024, the claimant obtained a letter from his GP stating it would be beneficial to the claimant to have a reasonable adjustment to be able to wear headphones with audio input, and to work only the early shift *'as recommended by the OH physician and AIM'*.

55. On 9 February 2024, the claimant received an outcome to his second flexible working request appeal. The reasons were as before; that his request would lead to 11 people on the early shift where only ten machines are core machines, the other two running only when there is a particular demand. The imbalance of numbers, where 8 persons are on the back shift would make it difficult to meet output targets, which would be exacerbated still when holidays and sickness absences occurred. The claimant was reminded that the last 18 months had seen significant change in the volume of orders, leading to the loss of temporary and permanent staff, and decreased flexibility on offer to the workforce.

56. Since June 2023, the respondent has asked the claimant on three occasions to move workstations within Value Stream 1, from pleating to line feeding; the claimant recognised in evidence that the number of requests made of the claimant were significantly fewer than those made of his colleagues; we accept that the respondent has minimised the number of occasions to those necessary. On each occasion, the claimant was given notice of the change, which was due to take place on a different

day, but each of them required the claimant to leave the pleating workstation to work on the line feeding station instead. On the most recent occasion, he was given notice on Friday 15 March 2024 of the possibility of a move from pleating to line feeding the following week as soon as the respondent was aware of the possible need. The claimant raised an informal complaint, contending that it was unnecessary for him to do so, as he believed the respondent had sufficient trained operators on shift; he did not in fact move. The claimant was given a written explanation on 19 March 2024 of the circumstances in which the respondent had a reduced demand of work, and refresher training was to take place on certain workstations. A request made of the claimant to move on 21 March 2024 from line feeding to pleating, by contrast, elicited no such complaint.

57. During the hearing, the Tribunal was taken to numerous items of lengthy and detailed correspondence written by the claimant in which he provided information about his personal circumstances and sought further information or clarification about various matters from the respondent.

58. The Tribunal received evidence about the respondent's risk assessment, carried out by their safety manager, of the use of those headphones with audio, as selected by the claimant. as '*high'*, and without audio being streamed through them as '*low'*. Even when the claimant carried out his own safety risk assessment, he identified the risk of his headphones of choice as presenting a medium risk. We accept that if the claimant is permitted to listen to audio whilst working, he is at heightened risk of failing to hear safety critical sounds around him, such as alarms, instructions, warning and the possibility of, for example, walking into the path of someone or something such as a metal trolley or forklift trucks, was high, when compared to the use of hearing protection without music. Furthermore, we accept that the risk is a very real one, given the recent event of an oven catching fire, the first warning sign of malfunction being the unusual noise being emitted by it.

Relevant Law

59. The duty to make reasonable adjustments for disabled persons is covered by section 20 Equality Act 2010, the material parts of which state:

'(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.
. .
(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.'

60. Failure to comply with a duty to make reasonable adjustments amounts to unlawful discrimination: s21(2).

61. The duty does not apply if 'A' does not know, and could not reasonably be expected to know that an interested disabled person 'is likely to be placed at the disadvantage referred to in the first, second or third requirement' : Schedule 8, para 20(1).

62. A substantial disadvantage is one that is more than minor or trivial: s.212 EqA 2010.

63. An employee must show on the balance of probabilities that they were *in fact* put to the substantial disadvantage relied on and the Tribunal must have regard to the overall picture, not just medical evidence. However, it can be relevant to the determination if there is no medical assessment supporting that the claimant was put to the disadvantage relied on: *Browne v The Commissioner of Police of the Metropolis* UKEAT/0278/17/LA at paras 28 to 30, 40 and 44.

64. The Employment Code provides examples of factors which might be taken into account when deciding what is a reasonable step for an employer to have to take: para 6.28.

65. An employer is not required to select the best or most reasonable of a selection of reasonable adjustments, nor is it required to make the adjustment that is preferred by a claimant. The test of reasonableness is an objective one: *Linsley v HMRC UKEAT/0150/18/JOJ.*

66. Section 80F(1) Employment Rights Act 1996 provides the right to make a flexible working request. Section 80F(2) identifies what must be contained in a valid request.

67. Before 6 April 2024, section 80F(4) read as follows:
If an employee has made an application under this section, he may not make a further application under this section to the same employer before the end of the period of twelve months beginning with the date on which the previous application was made.

68. Section 80G(1) provides that

an employer to whom an application is made under section 80F is made

. .

(aa) shall notify the employee on the application within the decision period . .

69. Section 80G(1A) and (1B) defines the *'decision period'* as being by 3 months beginning with the date of the application.

70. If the word of a statue are precise and unambiguous, then they must be given their natural and ordinary meaning: *Sussex Peerage Case (1844) 1 Cl & Fin 85.*

Discussion and Conclusions

71. Disability and knowledge of the disability at all material times is accepted by the respondent.

PCPs, Substantial Disadvantage and Knowledge

72. The respondent accepts that it applied the PCP of requiring the claimant to work different shift patterns, and to work at different workstations. The claimant conceded that the PCP of requiring the claimant to work on different Value Streams was not, in fact, applied to him and for that reason, any complaint based on this PCP must fail.

73. We remind ourselves that ASD is a spectrum disorder, with wide ranging symptoms, affecting different people differently. It is for the claimant to satisfy the Tribunal that the PCPs put him, personally, to the substantial disadvantages that he has identified and relies upon. The claimant contends that a move from one shift to another, or a move from one workstation to another causes him mental trauma and distress, and/or 'meltdown' or 'shutdown'.

74. On this issue, as well as several other aspects of his evidence, we had significant concerns about the claimant's credibility.

75. Our first concern was the lack of evidence provided by the claimant himself about the impact of a shift change whilst working on Value Stream 1 or a change in workstation in Value Stream 1 had on his health. Nowhere in his witness statement, which is detailed in 40 pages long, did the claimant explain what he meant by, much less how he experienced meltdown, shutdown or mental distress and trauma as a result of a shift change or a change in workstation (or, for that matter, 'burnout' said to have been suffered as a result of a failure to provide noise cancelling headphones without audio input) . We consider that to be a troubling and striking omission, given that the claimant has been legally represented throughout the proceedings, has an awareness of his own condition to the extent that he sought management training to spread awareness of its condition; he accepted in evidence that he understood the importance of including in his witness statement relevant information.

76. Our concerns were compounded by the length of time over which the claimant had raised no concerns with the respondent about the alleged impact on his health as a result of working a two-shift pattern, or being required to change workstations. The claimant worked for over a decade without any indication that the two-shift pattern, or being asked to move between workstations, caused him any adverse effect.

During his absence, and in discussion about his return to work with AR and Steve Swindon, when a range of adjustments were discussed, the claimant did not raise any personal difficulties with returning to his usual shift pattern; the temporary arrangement to return to early shifts on Value Stream 1 was agreed on the basis that it assisted his care of his son. Nor did he suggest in his grievance in December 2022, by which time he had been working for over 3 months, that the arrangement was to his own benefit. We were taken to numerous items of correspondence written by the claimant in which he provided information about his personal circumstances and sought further information or clarification about various matters from the respondent, yet the first suggestion that a permanent early shift would meet the claimant's needs was contained in his first flexible working request, dated 1 March 2023.

77. Furthermore, the claimant met with the respondent, on our findings, on at least 13 occasions between August 2022 and April 2024. On only one occasion did the claimant use the phrase 'meltdown', being that at the meeting on 5 June 2023, but he did so in circumstances that are not relevant to our findings.

78. We note that the AIM report refers to masking, but in relation to communication difficulties; his expressive language was identified as being '*much better'* than his receptive language. Indeed, the claimant, on his own account, is able to, and enjoys, advocating on behalf of his colleagues, on varied matters, at short notice, with management in his role of trade union representative. Although we note that the AIM reports states that the claimant may have difficulty '*initiating'* a conversation when it is about himself, we are concerned about a lengthy period of time over which the claimant was not only initiating, but also engaging in numerous conversations both verbally and in writing, yet made no suggestion at all, until 1 March 2023, that he may require accommodation to meet the challenges of his autism.

79. Nor is the claimant's case supported by the AIM and NHS written reports upon which seeks to rely. The case before us that any change in the shift pattern, or any change in workstations, gives rise to the substantial disadvantages relied upon. Both the AIM and the NHS report counsel against change in working pattern *without notice*. It is unexpected change that the reports say causes the claimant difficulty. They do not state that the claimant cannot deal with change per se, or that the giving of notice of change to the claimant will give rise to distress.

80. The two-shift rota pattern on Value Stream 1 provides the claimant with the familiar environment, and consistent working pattern that the reports recommend. The shift requires him to work the early shift one week, and the 'back shift' the following week. He worked on the workstations in Value Stream 1, and there is no suggestion before us that he was ever required to change workstation without notice. Although he objected to the three occasions when he was asked, on notice, to move from pleating to line feeding, he raised no objection to being asked to move from line feeding to pleating. He made no suggestion in his oral evidence of distress caused

when required to stop working on the pleating machine, mid-task, to meet the urgent demands of his trade union role.

81. Drawing together all those matters above, we conclude that the claimant has not satisfied us that a change in shift, or a change in workstation gives rise to the substantial disadvantages he relies upon. The Tribunal was left with the impression that the claimant's requirement to remain on a permanent early shift on Value Stream 1 was a preference, rather than one borne of a disadvantage referable to his disability.

82. We are not satisfied that the respondent had actual knowledge of the substantial disadvantage as identified in the issues. The claimant did not inform the respondent that he suffered from meltdown (save in the single instance, when it was not referable to his work) or shut down, or mental trauma and distress.

83. Nor are we satisfied that the respondent should be fixed with constructive knowledge the same. Insofar as the claimant may seek to rely on the AIM report, we note that the only occasion when 'meltdown' or 'shutdown' was used by the author of the report, was in a general paragraph relating to those with a monotropic mind: *'transitioning from one task to another in what is called a 'flow state' can not only be traumatic for someone who is autistic, it can result in a meltdown or shutdown'.* That is to be contrasted with other aspects of the report that are said to be specific to the claimant, wherein the author states, for example, *'Andrew does not cope well . .'* or *'Andrew has always masked . . '* etc. We have no difficulty with the concept being described by the author, but the question for the Tribunal is whether this respondent ought reasonably to have known that the claimant was in fact put to that substantial disadvantage.

84. We have some difficulties with the accuracy of the contents of the AIM report even insofar as it does purport to give individualised advice about the claimant. By way of example, its advice that the claimant's communication was impaired and his stated difficulty in transitioning from one task to another was in contrast with the evidence before us about the claimant's execution and enjoyment of his trade union role.

85. In any event, the claimant and the respondent over a protracted period during the claimant's absence in 2022 and for the following 18 months discussed, met and corresponded in extensive detail about the causes of his absences and the steps to be taken to alleviate the difficulties he encountered. In one of several aspects with which we had concerns about the claimant's credibility, he maintained in evidence that he had *'no input',* and when pressed in cross examination, *'minimal input'* into the progress plans devised by the respondent. That is self-evidently inaccurate; the adjustments sought by the claimant and how they were to be met by the respondent were recorded in immaculate detail. We were highly impressed by the care and attention to detail given by the respondent in meeting the requests of the claimant.

The respondent met with the claimant on 13 occasions, being welfare meetings, grievance or flexible working request meetings, and progress planning meetings, between August 2022 and April 2024, all of which involved, in one form or another, discussions about the adjustments he required to assist him in his work. In none of them did the claimant indicate to the respondent that the requirement to work a two-shift pattern, or to move from line feeding to pleating, gave rise meltdown, shut down or mental distress and trauma.

86. The respondent did all it could be reasonably expected to do, to engage with the claimant and to consider the advice provided from various sources, in order to understand what, if any, adverse impact there was on the claimant of requiring him to continue to work a two-shift pattern on Value Stream 1, and moving him between workstations.

87. We are not satisfied that the respondent knew, or ought reasonably to have known, despite its significant efforts to engage with the claimant, that he was put to the substantial disadvantages he now relies upon.

Auxiliary Aid and Substantial Disadvantage

88. The claimant contends that he required noise cancelling headphones with audio input, in order to avoid a substantial disadvantage that he identifies as *'working in an environment with background noise causes burnout at the end of the claimant shift'.*

89. We are not satisfied that the failure to provide the claimant with noise cancelling headphones that played audio in fact put the claimant to the substantial disadvantage. First, as above, there is an absence of evidence in the claimant's own witness statement to this effect. Second, he did not make any mention of such a disadvantage to the respondent until July 2023, being 4 months after the receipt of the AIM report in which the claimant was said to be hypersensitive to sound, for any or any compelling reason. Third, we consider that the claimant would have been in a position to indicate at an earlier stage that he was adversely impacted by the inability to unilaterally control the noise in his work environment, since we expect that his everyday experiences outside the workplace might have led him to believe that he fared better with audio input headphones.

90. Furthermore, the AIM report does not describe a disadvantage suffered when exposed to *'background noise'*, but to a *'busy environment'.* We consider the distinction to be important for three reasons. First, a working environment without background noise would be a rare occurrence, and so if that is what the author intended to say, we would have expected her to say it. Second, the reference to a *'busy environment'* in the AIM report is, we find, a reference to a noisy environment; if it is to be read consistently with the NHS report, it is an environment in which he is exposed to loud, constant and high-pitched sounds. Finally, the AIM report

suggested the use of noise cancelling headphones; again, if read consistently with the NHS report, that was a recommendation that the respondent provide headphones that reduce noise, rather than provide additional audio. For the avoidance of doubt, we are not persuaded that the recommendation to provide noise cancelling headphones is a recommendation to provide headphones that eliminate noise entirely, as we understood the claimant to suggest at one stage during the hearing.

91. Finally, neither the AIM reports, the NHS report, nor the various Occupational Health reports support the claimant's case that headphones with audio input would assist the claimant. When specifically approached by the claimant to provide support in the form of an addendum report in July 2023, the author did not suggest that the claimant would benefit from headphones that played audio; it appears at the time, the claimant was concerned to have wireless headphones. The NHS report does not suggest that headphones with audio input would avoid a disadvantage suffered by the claimant. In the report of 6 October 2023, the Occupational Health physician was agnostic about the provision of noise cancelling headphones that played audio, evidence; we consider that undermines the claimant's case that without the aid contended for, he would suffer adversely.

92. We are not satisfied that the claimant suffered the substantial disadvantage he relies upon.

93. The complaint that the respondent failed in its duty to make reasonable adjustments is not well founded.

Auxiliary Aid and Reasonableness

94. This duty requires employer to take such steps as is reasonable to have to take, in all the circumstances of the case, in order to make adjustments. The test is an objective one.

95. The respondent agreed to provide a set of noise cancelling headphones on 5 June 2023, that is to say, before he returned to work on 19 June 2023. His subsequent request for wireless headphones was rejected on 5 July 2023. The first mention, by the claimant of an alleged need to provide noise cancelling headphones *with audio input* was late July 2023. We find that it was not reasonable for the respondent to provide headphones that played audio. The safety risk of allowing the claimant to use headphones that played audio was high. It was a real risk, with the respondent having suffered a fire recently, which was detected by the unusual noise being made by a machine. We consider it telling that when first discussing noise cancelling headphones with AIM, the claimant himself was quoted as believing that that was unlikely to be acceptable, because he worked in a highly controlled environment, *'and for very good reason'*.

96. If the claimant's case is to be interpreted literally, that is to say, there was a need to eliminate any background noise, then we find that any adjustment necessary to avoid the substantial disadvantage would be unreasonable. The claimant works in a production room containing machinery that the claimant needs to maintain some situational awareness of, for the safety of himself and other colleagues; a set of headphones that plays audio to mask that noise would be as impractical and dangerous as a set of headphones that eliminate noise altogether.

97. On the other hand, if substantial disadvantage is said to be caused by a noisy working environment, then we note that the respondent had already discussed and agreed arrangements in May 2023, before his return to work, for the claimant to remove himself from the production room and utilise a safe space whenever required. That was a step that was reasonable in that we find it would be effective to avoid the disadvantage said to have been suffered; the respondent was not required to go further and provide the claimant with the adjustment of his choice.

98. The complaint that the respondent failed in its duty to provide an auxiliary aid is not well founded.

Flexible Working Request

99. The claimant made his first application for flexible working on 1 March 2023. It was compliant with the requirements of s.80F(2) ERA 1996 and the claimant does not argue otherwise. Two and a half months later, at the meeting on 18 May 2023 and at request of the claimant, who was at the time accompanied by his own trade union representative, the parties agreed to halt or '*stop'* the flexible working request *'and instead'* consider and deal with his requirements as a formal request for reasonable adjustments. That was done, leading to series of progress plan meetings to discuss in detail each and every request he sought.

100. The claimant argues that his subsequent flexible working request, made on 26 October 2023, was not concluded until after 3 months of that date i.e. 9 February 2024 and that therefore the respondent was in breach of s.80G ERA 1996.

101. We disagree. The claimant made his first compliant application on 1 March 2023. That was the application *'under s.80F'* that s.80G required the respondent to notify the claimant of the outcome within the 'decision period' of 3 months. He chose to abandon that application. At the relevant time, s.80F(4) ERA 1996 permitted an employee to make only one application in a twelve month period.

102. The provisions only allowed the claimant at the relevant time to make a single application in a twelve-month period, in respect of which the respondent was obliged to notify the claimant of its decision in the 'decision period'. That the claimant chose to abandon his application is nothing to the point; it was a compliant application pursuant to s.80F(2).

103. Although the claimant did, in fact, make another application in October 2023, that was within 9 months of his first application. Applying the ordinary and natural meaning of s.80G(1), the application in October 2023 was not the *'application under section 80F'* that obliged the employer to notify the claimant of *'the decision on the application'* with the decision period, because the effect of s.80F(4) was to disentitle the claimant to make that application.

104. The complaint is not well founded.

Employment Judge Jeram

Date: 29 January 2025

Issues

Flexible Working

1. The claimant submitted flexible working request on 1 March 2023 and 26 October 2023.

2. Did the way the parties agreed to resolve the first flexible working request (treating it as a request for reasonable adjustments) preclude the claimant from making the second application?

3. If not, the parties agree that the respondent did not deal with the claimant second application within three months.

4. Was there an agreement between the parties to extend the decision period?

5. If there was no agreement to extend, what remedy should be awarded under s.80I of the Employment Rights Act 1996?

Disability Discrimination

6. The parties agree the claimant had AST at all material times and was, therefore, disabled within the meaning of the Equality Act 2010.

7. Did the respondent apply the following PCPs to the claimant:
    a. to work different shifts patterns
    b. to work on different Value Streams, and
    c. to work different workstations.

8. Did the PCPs that paragraph 7 (a) to (c) put the claimant at a substantial disadvantage in that flexible working cause mental trauma and distress, and/or ‘meltdown’ or ‘shutdown’?

9. Did the lack of any auxiliary aid for the claimant at a substantial disadvantage compared with someone without a disability in that working in an environment with background noise causes ‘burnout’ at the end of the claimant shifts meaning he could not do anything except rest after leaving work?

10. Did the respondent had actual constructive knowledge of the substantial disadvantages?

11. If so, did the respondent acquired knowledge on or around 4 April 2023 and/or 18 May 2023, or at some later date?

12. Did the duty arose to make reasonable adjustment and/or provide an auxiliary aid? If so, when?

13. The claimant maintains following steps are reasonable to avoid the substantial disadvantage at paragraphs 8 and 9:
    a. a fixed shift pattern of 6am to 2pm;
    b. only working on Value Stream 1;
    c. only working on pleating, and
    d. provision of noise cancelling headphones capable of playing audio.

14. Are these adjustments and/or auxiliary aid reasonable to have to take to avoid the disadvantages to the claimant set out above?

15. In any event, is it reasonable to expect the respondent to make any other adjustments?

Liability

16. What, if any, recommendations are appropriate?

17. What if any award for injury to feelings should be made?