



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Mr R Coyte

and

**Respondent**  
Siemens Financial  
Services UK Limited

**Heard at Reading on:** 10, 11, 12 and 13 February 2020

## **Appearances**

**For the Claimant:** In person  
**For the Respondent:** Mr M Michell, counsel

**Employment Judge:** Vowles  
**Members:** Ms B Osborne  
Mr J Cameron

## **UNANIMOUS JUDGMENT**

### **Evidence**

1. The Tribunal heard evidence on oath and read documents provided by the parties and determined as follows.

### **Unfair Constructive Dismissal – sections 95(1)(c) and 98 Employment Rights Act 1996**

2. The Claimant was not unfairly dismissed. This complaint fails and is dismissed.

### **Direct Age Discrimination – section 13 Equality Act 2010**

3. The Claimant was not subject to age discrimination. This complaint fails and is dismissed.

### **Reasons – rule 62 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013**

4. Reasons for this judgment were given orally at the hearing. Written reasons are attached at the request of the Respondent.

## Public Access to Employment Tribunal Judgments

5. The parties are informed that all judgments and reasons for judgments are published, in full, online at [www.gov.uk/employment-Tribunal-decisions](http://www.gov.uk/employment-Tribunal-decisions) shortly after a copy has been sent to the Claimant and Respondent.

## REASONS

### SUBMISSIONS

1. On 20 May 2018 the Claimant presented a claim to the Tribunal with complaints of unfair constructive dismissal and direct age discrimination.
2. On 11 July 2018 the Respondent presented a response in which the claims were resisted.
3. A preliminary hearing was held on 22 February 2019. In a case management order the claims and the issues involved were clarified.

### EVIDENCE

4. The Tribunal heard evidence on oath from the Claimant, Mr Raymond Coyte (Head of International Vendor Accounts).
5. The Tribunal also heard evidence on oath on behalf of the Respondent from Mr Andreas Swadlo (Head of International Account Management and the Claimant's line manager) and from Mr Mark Carlin (Grievance investigation officer) and from Mr Gordon Smith (Grievance appeal officer).
6. The Tribunal also read documents in a bundle which ran to 236 pages.
7. During the course of the hearing, the Tribunal made an anonymity order under rule 50 of Schedule 1 to the Employment Tribunals Rules of Procedure in respect of two people who did not attend the hearing and who were not witnesses. They are to be referred to as Mr A and Ms B and a copy of the rule 50 order is attached to this judgment.

### FINDINGS OF FACT

8. The Respondent is a corporate finance provider. It is a corporate financing arm of the Siemens Group. Primarily, the Respondent works to finance Siemens internally and to Siemens' customers. Approximately half of the Respondent's business is with Siemens' customers and the other half is finance to independent organisations who have no link to the Siemens Group.
9. The Claimant started his employment with the Respondent in 2011, initially as Sales Efficiency Manager. On 5 September 2017 he was given a new role, that of Head of International Vendor Accounts. In the letter of

appointment, his reporting line was to Mr Andy Swadlo (Head of International Account Management). The letter of appointment said that, although he has a different job title, all other terms and conditions of his employment would remain the same.

10. In 2017 the Respondent underwent an internal restructure and Mr Swadlo was asked by Mr A (the CEO) to head up a new department as the Head of International Account Management. In his witness statement, Mr Swadlo said that, at that time, the Claimant was carrying out International Account Management work and his understanding was that the Claimant dealt with independent companies and not with Siemens' divisions.

11. The unit in which the Claimant was then working was disbanded and the Claimant was to be moved into Mr Swadlo's new team. He said he was happy with that arrangement. He already knew the Claimant and got on well with him. He considered that he was a capable individual and that he was needed in the new team which Mr Swadlo was seeking to build.

12. There was a meeting between the Claimant and Mr Swadlo on 25 September 2017. The Claimant dealt with this in his witness statement:

*"Mr A transferred me to report to Andy Swadlo sometime around 7 September 2017. I cannot say exactly when as it was never announced and I never saw a letter or email on the topic. I think he offloaded me onto Mr Andy Swadlo as he felt I needed to be kept remote from him. Andy Swadlo and I met face to face on 25 September 2017. I hoped it was for him to give me my PMP and new objectives. This did not happen and he told me to continue what I was doing while he considered how he was going to organise his team. Andy Swadlo claims he gave me verbal objectives as that time. This is just not true. If he had, they would have been formalised in 4success which records such matters. ...*

*Andy Swadlo makes statements in an internal meeting about supposed discussions and agreements with me about my role. This is all fantasy and him covering himself. We never had discussions like this."*

13. Mr Swadlo gave a different account. He said in his witness statement:

*"On 25 September 2017, I met the Claimant before I started my new role. We discussed how we both saw things developing and considered this to be a very positive meeting. I told the Claimant that I wanted him to continue with the international business while I set up the team. We then discussed how the team would look in the future. I told him that in my view it was too soon to tell but we certainly knew that we needed to grow the team."*

14. The Claimant's response was that if more people were brought into the team, he wanted to be head of the department.

15. There was a further meeting between the Claimant and Mr Swadlo on 8 November 2017. The Claimant referred to that in his witness statement:

*“On 8 November 2017, I showed Andy Swadlo the earlier letter from Mr A appointing me to the role. This was dismissed by Andy Swadlo as no longer applicable as he was changing his organisation.”*

16. Mr Swadlo’s account was this:

*“The Claimant was signing himself off with the title Head of International Vendor Accounts. I had a long discussion with the Claimant on 8 November 2017 in relation to his job title and the role that I needed him to perform. As far as I was concerned, the outcome of that discussion with the Claimant was complete alignment between us in relation to his role as Key Account Manager for Third Party Vendors reporting directly to me. The conversation I had with the Claimant on 8 November was consistent with the one I had with him on 25 September 2017 face to face”*

17. He said that he set out the content of the discussion in an email and that is at page 129.

18. The next significant event is in the Claimant’s witness statement. He said that he spoke to Mr A on the telephone on 17 January 2018:

*“I took my grievance to Mr A in October 2017 informally and formally on 17 December 2017 [that date is clearly wrong and we assess that it should refer to 17 January 2018] but no action was taken. Bluntly I think he was pleased. He did not start the formal grievance process. He did state at that time “I don’t blame you. I will cut you a deal”.”*

19. We did not hear any evidence from Mr A and the Claimant gave little detail as to what was in the grievance he referred to. We are satisfied that he did raise some form of concerns verbally with Mr A but there is no direct evidence as to what they were.

20. There was then a meeting with Mr Swadlo and the Claimant on 22 January 2018. The Claimant dealt with this in his witness statement:

*“I then took my grievance to Andy Swadlo and asked for a face to face meeting which at first he declined but later agreed to. I told him of my position but he seemed indifferent and feigned surprise at my grievance. This happened on 22 January 2018 and no action was taken.”*

21. Mr Swadlo said:

*“We met on 22 January 2018. At this meeting, the Claimant told me he had decided to leave the Respondent. I told the Claimant I was very disappointed at this news as I needed him to remain part of my team. The Claimant went on to say we could do this the easy way or the hard way. I*

*asked him what he meant by that and he said we either needed to agree a compromise with him or things would get very nasty. I saw this as a threat on his part.”*

22. Mr Swadlo recorded the fact that the Claimant had told him that he was going to leave the Respondent in an email on 23 January 2018 to the Claimant:

*“Thanks for your time yesterday. I am really sorry to hear that you want to leave. It was something of a surprise given the conversation we had in the same location before. I think you will be a sad loss for the organisation and too bad that we didn’t really have a chance to work together properly once the team had been set up and established. Nevertheless, I must respect your clearly expressed wish and I will discuss the situation with Mr A in due course.”*

23. In response to that on the same day, 23 January 2018, the Claimant replied:

*“Thank you for your note and your kind words. I understand your rationale [that was the rationale about not attending a team dinner later on] and, although I admit I am a little upset and sad about it, I won’t turn up at the team dinner if it causes issues for you. I will do what is right for you, your team and the company. It is unfortunate that I have had to take this decision because the position I am in is not of my making and not my fault.*

...

*If you want me to go immediately I will - If you want me to stay a while to finish specific projects I will. It’s your call.”*

24. Mr Swadlo said in his evidence that at the meeting on 22 January 2018 the Claimant did not raise any grievances.

25. The Tribunal found, on the basis of the statements from the Claimant and from Mr Swadlo, that the Claimant had decided to resign no later than 22 January 2018 and that was communicated to Mr Swadlo at the meeting on that date. That is evidenced in the emails between them dated 23 January 2018 above.

26. The next significant meeting was between the Claimant and Mr Swadlo on 29 January 2018. The Claimant said this in his witness statement briefly:

*“Andy Swadlo and I had another meeting on 29 January 2018 and again no action was taken.”*

27. Mr Swadlo gave an account of that meeting in an email (at page 132) to Human Resources. It was not copied to the Claimant but it included the following:

*"I met with Ray Coyte this afternoon as a follow up to our last meeting on 22 January when he informed me that he would be seeking a compromise agreement from the company to avoid it getting nasty. Ray had told me at the last meeting that Mr A had promised to cut me a deal. He subsequently established with him that that was not the case. I sought to establish at this meeting precisely what grievances Ray had with the company.*

...

*At the meeting Ray claimed to the following as the basis for his argument for constructive dismissal.*

*He was appointed as "Head of International Vendors" role but according to him that was not the role he received.*

*He says he has no formal objectives.*

*He says he has no job title.*

*He says he has no job description.*

*He says his role has been downgraded.*

*He says his status has been downgraded.*

*He says that he is PL5 and based on recent promotions... he says he is "better than them" and "therefore I should be PL4".*

*He says he has had no PMP review for last year and for previous years.*

*He says in real terms his pay is less than when he started due to the "poor pay rises and I have not been promoted".*

*He also referred to personal issues he has with Mr A."*

28. On 31 January 2018 the Claimant wrote a resignation letter:

*"Following my discussion with Mr A on the 17<sup>th</sup> January and our meetings on the 22<sup>nd</sup> and 29<sup>th</sup> January on this matter, as we discussed, I am writing to inform you that I am forced to resign from my position with Siemens Financial Services.*

*Please accept this as my formal letter of resignation and a termination of our contract.*

*I felt I am left with no choice but to resign in light of my recent experiences and situation. In the normal course of events I would want to stay working for Siemens for many years to come.*

*I have been placed in a very difficult situation that forces me to leave for the following reasons..."*

29. He then set out a list which included that he was appointed to the Head of International Vendor Accounts on 5 September 2017 but that on 8 November 2017 he was told that he did not hold this role and should not use that title, he did not have a job description, he did not have a job profile, he did not have any objectives for this year, he had not received

any PMP annual review so was unable to discuss his activities and agree his pay, had recently discovered that his pay increase is again below inflation and that he did not have an agreed job title or role and that damaged his reputation and authority within the company.

30. He went on to mention other matters that he was disappointed about. He also said, in addition due to personal circumstances involving other colleagues within Siemens that:

*“I do not particularly wish to discuss at this time I am placed in a compromised position that makes working with Siemens untenable. I consider there is a fundamental and unreasonable breach of the contract on the part of Siemens...”*

*I have a notice period of 8 weeks. As such I believe my last day will have to be 31<sup>st</sup> March (a Sunday).”*

31. Accordingly, the effective date of termination was 31 March 2018.
32. The Respondent took this letter as a grievance. The Tribunal found, and the Claimant accepted, that he had not in fact put any grievance in writing before that date, that is 31 January 2018.
33. Following his resignation letter, there was a grievance meeting with Mr Carling on 12 February 2018. He gave a grievance outcome on 15 March 2018 and the grievance was not upheld.
34. The Claimant appealed the outcome on 22 March 2018. The appeal was heard by Mr Smith on 3 April 2018. On 11 May 2018 Mr Smith gave an outcome to the appeal and that also was not upheld.
35. Finally, on 20 May 2018, the Claimant lodged his claim with the Employment Tribunal.
36. Those are the background facts.

#### UNFAIR CONSTRUCTIVE DISMISSAL

37. Paragraph 4 of the case management order made on 22 February 2019 deals with this claim.
38. **Paragraph 4.1.1** - *“The Claimant will say that the Respondent was guilty of breach of trust and confidence. The Claimant will say that the Respondent’s course of conduct over a period leading up to his dismissal was such that the Claimant had no option but to resign his employment. The Claimant will rely upon the last straw principle and the matters upon which the Claimant will rely include the following”.*
39. There is then a list which I will come to in a moment.

40. Section 95 Employment Rights Act 1996 sets out the circumstances in which an employee is dismissed. Constructive dismissal is defined as follows:
- (1) *For the purposes of this part an employee is dismissed by his employer if –*
- (c) *The employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.*
41. Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27 - An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once. ... He must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.
42. Hilton v Shiner Limited [2001] IRLR 727 - The implied term of trust and confidence is qualified by the requirement that the conduct of the employer about which complaint is made must be engaged in without reasonable and proper cause.
43. London Borough of Waltham Forest v Omilaju [2005] IRLR 35 - In order to result in a breach of the implied term of trust and confidence, a “final straw”, not itself a breach of contract, must be an act in a series of earlier acts which cumulatively amount to a breach of the implied term. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant so long as it is not utterly trivial. Thus, if an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence but the employee does not resign and affirms the contract, he cannot subsequently rely on those acts to justify a constructive dismissal if the final straw is entirely innocuous and not capable of contributing to that series of earlier acts. The final straw, viewed in isolation, need not be unreasonable or blameworthy conduct. Thus, the mere fact that the alleged final straw is reasonable conduct does not necessarily mean that it is not capable of being a final straw, although it will be an unusual case where conduct which has been judged objectively to be reasonable and justifiable satisfied the final straw test.



Moreover, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective.

44. Kaur v Leeds Teaching Hospital NHS Trust [2018] CA – The point being made in Omilaju was that if the conduct in question is continued by a further act or acts, in response to which the employee does resign, he or she can still rely on the totality of the conduct in order to establish a breach of the implied term. To hold otherwise would mean that, by failing to object at the first moment that the conduct reached the threshold for breaching the implied term of trust and confidence, the employee lost the right ever to rely on all conduct up to that point. Such a situation would be both unfair and unworkable.
45. Looking at the matters complained of by the Claimant.

**4.1.2 The Claimant was appointed to the position of Head of International Vendor Accounts by Mr A on 1 September 2017 confirmed in a letter on 5 September 2017**

46. The Tribunal found that was factually proved. In the Claimant's witness statement he referred to the three pillars to his claim. He said:

*"The central pillar is the key. This pillar relates to the fact that I was given a job by Mr A which was then subsequently taken off me by Mr Swadlo, my new manager. I was not given an annual appraisal or any objectives which are essential to earn part of my salary. I ended up as the odd job man and clearly was not wanted in the business."*

47. He said the second pillar was that he believed he was discriminated against because of his age. The third pillar related to a relationship between Mr A with a junior employee, Ms B.
48. Turning to **4.1.3 to 4.1.6**, we looked at **4.1.5** first of all:

**4.1.5 On about 8 November 2017 the Claimant was informed by Andy Swadlo that he was not to use the title of Head of International Vendor Accounts.**

49. The Tribunal find that was factually proved. Mr Swadlo dealt with this at paragraph 15 of his witness statement:

*"As far as the Claimant's job title was concerned, Mr A told me that the Claimant was to move to my team but he said nothing about a job title for the Claimant. I did not know what Mr A had said to the Claimant about a job title. The Claimant told me that he was Head of International Vendor Accounts. I explained to the Claimant at the time that this was a team of*

*only one and I had not decided how many would join the team and who those individuals would be. My view was that it was very difficult if not impossible for the Claimant to be a Head of anything when he was the only person in the team. As far as I was concerned, the Claimant was happy to agree with me but he did say that if I wanted him to take on more responsibility in the future then he would want an increased salary. This issue was not spoken about again between myself and the Claimant and the Claimant carried on working without any issue as far as I was aware. He was a Global Account Leader which was a senior grade.”*

50. The Tribunal found that Mr Swadlo’s account was supported by the contemporaneous record in his email to Human Resources on 8 November 2017. It was not a breach of trust and confidence. There was a reasonable and proper cause for the removal of the title “Head of International Vendor Accounts” as was given by Mr Swadlo in his witness statement and in his email of 8 November 2017. There was no demotion, There was no change to the Claimant’s terms and conditions of service and no change to his pay. In the context of the internal restructuring, it was reasonable and proper conduct by Mr Swadlo. It did not amount to a fundamental breach of contract.

***4.1.3 The Claimant was transferred to the management of Mr Swadlo and informed that he was not to perform the role of Head of International Vendor Accounts and that the role would be carried out by another employee.***

51. The Tribunal found that was not factually proved, although as found above, the title had been removed. The Claimant said:

*“Andy Swadlo and I met face to face on 25 September 2017. I hoped it was for him to give me my PMP and new objectives. This did not happen and he told me to continue what I was doing while he considered how he was going to organise his team.”*

52. Mr Swadlo also said:

*“During this period and throughout team briefings, it became apparent that there was no real change in the status of the work that the Claimant was carrying out.”*

53. That was accepted by the Claimant, not only in his witness statement, but also during the course of cross-examination. He was asked if he agreed that Mr Swadlo had said “*carry on with what you’re doing*” and he agreed with that. He was asked “*there is no team for you to head up?*” and he agreed with that. He said that the Respondent could have produced a team but agreed that at that time he was not the head of a team.
54. He was asked “*you were not asked to do anything inappropriate or reasonable*” and he said that was correct. It was put to him that the only

change was in the title and the role was the same. He said “*I carried on doing what I was doing*”. He was asked questions by the Tribunal and he said that the title had been removed and that was important but the role remained the same.

55. The Tribunal found that although the title was taken away, the existing role of the Head of International Vendor Accounts remained the same.

**4.1.4 The Respondent failed to carry out a performance management process for the Claimant in September/October 2017.**

56. The Tribunal found that that was factually proved. The Claimant was not given a PMP and that was part of what he described as part of the central pillar of his claim. He dealt with it in his witness statement:

*“Siemens has a strict PMP policy which is the annual appraisal and objective-setting method. The results are discussed at a management round table and objectives are entered into the HR system 4success. As can be seen despite asking, no objectives were set and no PMP was given to me. No round table happened. No development plan was entered into the system for me. No objectives were set. The PMP is important to all employees as there is no other method of setting objectives or getting pay increases, bonuses, promotions, etc.”*

57. Mr Swadlo agreed that there was no PMP. He said:

*“I was not involved in the Claimant’s PMP as it related to the previous year’s work when he was not in my team and he didn’t report to me. In my first meeting with the Claimant, we discussed this issue. We agreed that he would manage the key accounts while I built the team following which we would look at his objectives again. This was a strategic team and there was a lot of pressure on me to build it.”*

58. That account was confirmed in a contemporaneous record made by Mr Swadlo on 29 January 2018 when he said:

*“He has no written objectives from me but he does have objectives, the primary one of which is to manage existing third party key accounts until a review of this function is completed. This was agreed in September.”*

59. The Tribunal found that the failure of the Respondent to follow strictly the policy on PMPs had reasonable and proper cause given the context of the internal restricting described by Mr Swadlo. The Claimant was, or should have been aware of that. It was not a breach of trust and confidence and it was not a fundamental breach of contract.

**4.1.6 The Claimant raised his concerns with the CEO on 17 January 2018 and with Andy Swadlo on 22 and 29 January 2018. The Respondent took no action to address the Claimant’s concerns**

60. The Tribunal took that to be what the Claimant was saying was the final straw which caused him to resign.
61. The Tribunal accepted that the Claimant did raise some concerns with the CEO (Mr A) by phone on 17 January 2018 but nothing was put in writing and the Tribunal had no details of the concerns raised. There were no grounds, therefore, to conclude that Mr A's actions in not addressing such concerns as were raised amounted to a fundamental breach of contract.
62. So far as the meetings with Mr Swadlo on 22 and 29 January 2018 were concerned, the Tribunal found that on 22 January 2018 the Claimant told Mr Swadlo that he was leaving his employment but we find that there was no mention of any grievances. We looked at the email exchange between Mr Swadlo and the Claimant on 23 January 2018 quoted above. That simply refers to the Claimant leaving. We found it implausible that the parties to that email correspondence would make no reference to grievances if grievances had been raised on 22 January 2018.
63. Finally, we find that on 29 January 2018, the Claimant did raise grievances with Mr Swadlo as set out in Mr Swadlo's email of that date but, two days later, on 31 January 2018, the Claimant resigned. The Respondent then immediately dealt with the matters raised in his resignation letter as a grievance.
64. The Tribunal found that the Claimant gave no reasonable opportunity between 29 January 2018, which was the first date upon which we find that he raised grievances, and 31 January 2018, for the Respondent to deal with those grievances. In fact, as soon as he did put those grievances in writing in his resignation letter, immediate action was taken and a full investigation was carried out by the Respondent. The Claimant in his evidence was complimentary about the thoroughness of Mr Carlin's investigation. He was given an opportunity to appeal his decision and he was given the outcomes of both the grievance investigation and the grievance appeal in writing.
65. In summary, the Tribunal found there was no breach of trust and confidence in any of the allegations set out at paragraphs **4.1.3 to 4.1.6**. There was no fundamental breach of contract, no final straw, and no lack of action which the Claimant alleged in **4.1.6**.
66. There was no constructive dismissal and the claim for unfair constructive dismissal therefore fails.

#### AGE DISCRIMINATION

67. The claim for age discrimination was clarified in the further and better particulars which were ordered at the preliminary hearing. Those were sent

in by the Claimant on 3 April 2018 and they are included at pages 35, 36 and 37 of the bundle.

68. Equality Act 2010

Section 13 – Direct Discrimination

*(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

Section 136 – Burden of Proof

*(1) This section applies to any proceedings relating to a contravention of this Act.*

*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

*(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

69. There is guidance from the Court of Appeal in Madarassy v Nomura International plc [2007] IRLR 246. The burden of proof does not shift to the employer simply on the Claimant establishing a difference in status and a difference in treatment. Those bare facts only indicate a possibility of discrimination, they are not without more sufficient material from which a Tribunal could conclude that on the balance of probabilities the Respondent had committed an unlawful act of discrimination. The Claimant must show in support of the allegations of discrimination a difference in status, a difference in treatment and the reason for the differential treatment.

70. If the burden of proof does shift to the Respondent, in Igen v Wong [2005] IRLR 258 the Court of Appeal said that it is then for the Respondent to prove that he did not commit or is not to be treated as having committed the act of discrimination. Since the facts necessary to prove an explanation would normally be in the possession of the Respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof and to prove that the treatment was in no sense whatsoever on the prohibited ground.

71. In Ayodele v Citylink Ltd [2017] the Court of Appeal held that the burden of showing a prima facie case of discrimination under section 136 remains on the Claimant. There is no reason why a Respondent should have to discharge the burden of proof unless and until the Claimant has shown a prima facie case of discrimination that needs to be answered. Accordingly,

there is nothing unfair about requiring a Claimant to bear the burden of proof at the first stage.

72. Section 23 - Comparison by reference to circumstances

(1) *On a comparison of cases for the purposes of section 13, 14 or 19, there must be no material difference between the circumstances relating to each case.*

73. Section 24 of the Act states:

*“For the purpose of establishing a contravention of this Act by virtue of section 13(1), it does not matter whether A has the protected characteristic.”*

74. Turning to the allegations, in paragraph **1.1**, the Claimant simply confirms that central pillar which is referred to in his witness statement.

75. In paragraph **1.2 a)**, he says that he was discriminated against in respect of promotion within Siemens Financial Services Limited and he expands upon that in **1.3 a)** where he says that

*“Mr A (CEO) did not follow the correct company promotion and appointment procedures during 2016, 2017 and 2018 and did directly discriminate against me.”*

76. That is simply a general allegation which is then expanded upon in the following paragraphs.

77. Paragraph **1.2 b)** says:

*“I felt humiliated at the company wide management conference by my manager Mr A Swadlo”*

and at **1.3 b)**, he says:

*“Mr Swadlo had two direct reports – myself and a younger employee – and at the 2017 Global management meeting in front of some 80 worldwide managers he presented his vision for his new department. The theme being that the old ways were no longer relevant and just like in Formula 1 racing he intended to make changes to do away with the old approaches. It was commented on afterwards that this was a direct reference to me. I felt humiliated.”*

78. That was a conference which took place in 2017 when the Claimant was aged 62. The Claimant dealt with it in his witness statement as follows:

*“In November 2017, Andy Swadlo presented to the entire management team globally how he was going to change his department. There were*

*only two people reporting to Andy, myself and a young woman. The presentation is in the bundle. I felt humiliated as his theme was all about out with the old and in with the new."*

79. Mr Swadlo said that during that presentation he made a comment at the start about the level of stress in the room as an icebreaker for the audience. He said: *"I also referred to myself as having to change my way of thinking in the context of a wider joke which was along the lines that some of us, namely myself, should have retired by now as we all looked so stressed. At no time did I mention the Claimant when making these comments and there would have been absolutely no reason for anybody in the audience to consider that these comments were aimed at any individual let alone the Claimant."*
80. The Tribunal looked at the slides which were used at that conference and could find nothing which related to the Claimant's age or age group or which the Claimant, or anybody else, could reasonably have interpreted as such. There was nothing unusual, we found, in a company talking about change and moving forward. There was nothing which amounted to age discrimination said during the course of that conference.
81. In paragraph **1.2 c)**, the Claimant says: *"I was further humiliated at the global sales conference by Mr Swadlo"* and, in 1.3 c), he said: *"Mr Swadlo repeated the presentation a few days later at the global sales meeting in front of some 120 sales and marketing professionals. Again, I felt immense embarrassment and felt discriminated against."*
82. We made the same finding so far as the second presentation was concerned. It was the same presentation. Mr Swadlo said that he did not remember giving the presentation twice but our finding was the same. We could find nothing which amounted to any discriminatory act related to the Claimant's age or age group.
83. In paragraph **1.2 d)**, the Claimant said:  
  
*"More favourable treatment was shown in respect to promotion to a younger colleague within the department Business Development."*
84. He expanded upon that in paragraph **1.3 d)** where he said:  
  
*"That Mr A discriminated against me by appointing an unsuitable and unqualified junior manager called Melanie Kratz to run the Business Development department. This was a role that Mr A had confirmed verbally to me I was to have but subsequently told me that the company wanted someone younger. I was not given an interview for the role despite asking."*
85. There is nothing in the Claimant's witness statement about this particular allegation. In questioning during the course of the hearing by the Tribunal,

the Claimant could not provide any further details of the circumstances in which Ms Kratz was promoted. We therefore had no evidence before us regarding her appointment and no evidence that it was an act of age discrimination or that the Claimant was treated less favourably by the Respondent.

86. Additionally, so far as this particular incident was concerned, it took place in 2015, which was three years before the claim was presented to this Tribunal. It was therefore presented out of time, that is outside the three month time limit set in section 123 of the Equality Act. There was no evidence put before us that this was part of a continuing act and no grounds upon which we could extend the time based upon the just and equitable principle. There was no evidence of age discrimination and it was out of time and therefore the Tribunal had no jurisdiction to consider it in any event.

87. In **1.2 e)** the Claimant said:

*“That in addition, and separately, a more favourable treatment was shown in respect of promotion of a younger employee within the Proximity Department”*

88. In **1.3 e)**, the Claimant said:

*“That Mr A was having an affair with a junior employee, Ms B, and bypassed the company procedures in respect of expenses and promotions by promoting her above me without allowing me to apply for such a role.”*

89. The Claimant went on to say that that person who was appointed to that role was in an age group of early thirties.

90. Again, there was nothing in the Claimant’s witness statement about that particular event. It was said to have taken place in 2017. The Claimant was asked about it during the course of the hearing and he confirmed that that person was appointed to the role but he also confirmed that he did not apply for the role. The person who was appointed was one of only two employees who were working for Mr Swadlo.

91. In view of the fact that the Claimant did not even apply for the job, there were no grounds for saying that her appointment amounted to less favourable treatment for the Claimant. There was no evidence of any age discrimination. We were not made aware of any other circumstances regarding that person’s appointment.

92. Finally, in **1.2 f)**, the Claimant said:

*“That Mr A seemed to find it amusing announcing that I was the oldest in the company.”*



93. He expanded on that and said: *“Mr A made it known to members of his management team when I turned 60 that I was the oldest in the company. This seemed to be a matter of amusement to him.”*
94. The Claimant said in his witness statement:  
  
*“In my final years, there were comments about my age. I was the oldest employee in the business and this appeared to be a source of amusement. Mr A even told the management team when I reached my sixtieth birthday, an action that I felt unnecessary, irrelevant and hurtful.”*
95. However, we agreed with what the Respondent said in its closing submissions. First of all, the Claimant was not present at the meeting where this comment was allegedly made. He was told by others that it was a mention of his birthday. There was no comparator mentioned and nothing to suggest that there was anything derogatory said about his age. It was just that his birthday was mentioned. Mr A was approximately the same age as the Claimant and was, at that time, a personal friend of the Claimant. We found that simply mentioning that someone had reached a milestone birthday could not, without more, amount to age discrimination.
96. In addition, as we mentioned above in respect of one of the other claims, this was an event which took place in 2015. It was therefore presented to the Tribunal three years out of time and there were no grounds to extend the time limit. The Tribunal had no jurisdiction to consider this complaint.
97. The complaint of age discrimination fails.
98. We should comment that so far as the age discrimination claim was concerned, it was, at best, a half-hearted claim by the Claimant. On his own account, he made no mention of anything to do with age until his grievance appeal in April 2018. It was not part of the unfair constructive dismissal claim. He said it was not a trigger for his resignation. He accepted during the course of his evidence to the Tribunal that he added the age discrimination complaint to *“raise the ante”* in his claim and to *“wind up the temperature”*. When he was cross-examined about the age discrimination complaint, he said: *“If I’m wasting the Tribunal’s time, I’ll move on. It’s not a big part; it’s a factor. I am not overly-emotional about it.”*
99. The complaints of unfair constructive dismissal and age discrimination fail for the reasons which I have given.

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Employment Judge Vowles

Date: ...23 March 2020

**Case Number: 3307332/2018**

Sent to the parties on:

.....9 June 2020....

.....  
For the Tribunals Office