EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 21, 22 and 23 April 21

Claimant: Mr Christopher Saunders

Respondents: Clancy Docwra Ltd

Before: Tribunal Judge Mr J S Burns, Members Mr T Robinson, Mr F Benson
Representation
Claimant: Ms K Anderson (Counsel)
Respondent: Mr P Sangha (Counsel)

JUDGMENT (by the members in a majority, the tribunal judge dissenting)

1. The Claimant was unfairly dismissed
2. The Respondent discriminated against the Claimant contrary to sections 15, 20 and 21 Equality Act 2010
3. The Respondent must pay compensation to the Claimant of £35526.02.
4. The Respondent must pay the Claimant £27800.78 within 14 days of the date this judgment is sent to the parties and the balance due when the Employment Tribunal (Recoupment of Benefits) Regulations 1996 have been complied with.

REASONS

1. These were claims of unfair dismissal, and discrimination arising from disability contrary to section 15 Equality Act 2010 and failure to make reasonable adjustments for disability contrary to section 20 and 21 of the same Act.

2. We heard evidence in this order from the following witnesses: Mr G Bennett, (who at the relevant time was the Senior Contract Manager for the Respondent's UK Power Networks (UKPN) business unit in London; and the Claimant's senior line manager); Ms N Allibhai (who is a Respondent HR business partner), and then from the Claimant, (who was a project manager working in the respondent's UKPN business unit until he was dismissed on the expiry of 12 weeks' notice on 5/4/2020).

3. The documents were in an agreed bundle. During the hearing we admitted into evidence at the beginning of the second day additional disclosure by the Respondent of extracts of a contract dated 30/11/2015 entitled "Alliance Agreement for ED1 Capital Delivery Works" . This was opposed by Ms Anderson on the grounds that she did not understand it and didn't have time to take instructions on it. We did not agree with these submissions and concluded that it was potentially relevant and that if necessary either side could ask or recall witnesses to explain or comment on it, which invitation neither side took up. In the event the document has not had any material bearing on the outcome.

4. We also received a chronology, and a written opening and two written closings from Ms Anderson and a written closing from Mr Sangha. We also received oral submissions. We have taken note of all these documents and submissions even if we do not mention them expressly.

5. There was a list of issues in the bundle which was confirmed at the outset as agreed, and which the tribunal as a whole has used to guide its deliberations.

6. Mr Sangha on behalf of the Respondent conceded at the beginning of the hearing both that the Claimant was disabled and that the Respondent knew about it at the material times.

7. We received evidence and submissions on liability, Polkey and remedy at once and then reserved our decision.

8. The hearing was held by CVP. There were no significant technical problems. The participants were told not to make any recordings or screenshots.

(Unanimous) Findings of fact.

9. The Claimant started employment with the Respondent on 20 November 2002 as a General Foreman. He was later promoted to Assistant Site Manager then Site Manager on 1 April 2011. He took up his final position as a Project Manager on 1 July 2014 and from June 2017 onwards worked on projects for UK Power Networks ('UKPN') based in London. The Claimant's home is in West Malling, Kent.

10. The Respondent is a large construction firm employing over 2,500 people. The Claimant's work and role as a Project Manager was divided between construction, engineering, and commercial activities.

11. The UKPN sites in central London are live electricity substation environments . One such was St Pancras, which had been running for several years and ended on 11.01.2020.

12. The Claimant's role at St Pancras in 2019, particularly as the year went on, was more akin to a site manager. There was another Project Manager that "sat above" the Claimant at St Pancras. It was considered to be a "safe site" for the Claimant to operate in towards the end of 2019.

13. The Claimant's role was to actively oversee and supervise operations. The employees under his supervision fluctuated between 6-18 employees. The sites were potentially dangerous. The Claimant's role was "safety critical". He was responsible for "putting people to work" in a safe way in the mornings and ensuring that the appropriate regulations were complied with. He was an accredited Site Manager Safety Training Scheme (SMSTS) certificate holder who need to be in attendance so a site can actually run. He was also a keyholder.

14. After starting as Project Manager in UKPN sites in London in June 2017, the Claimant had had significant absences from work in 2017, 2018 (39 working days). The absences in 2017 and 2018 were attributable mainly to spinal/neck problems.

15. The Respondent had allowed the Claimant to work more flexibly at a site at Wimbledon in 2018 as a means of reducing the impact of his travel time, but this was a 2-hour journey each

way from the Claimant's home and did not prove successful. He was temporarily moved to the PDD team in Dartford from 27.09.2018 to 11.01.2019 as an interim solution, after which he was moved to the St Pancras site to resume his proper role full-time.

16. The PDD team does pre-construction work, which is desktop work. The Dartford premises are the Respondent's internal hub where administration, training, quantity-surveying and other similar desk-jobs are carried out. The Claimant agreed in his oral evidence that he could only at best have carried out 5% of his role checking emails etc at Dartford.

17. We agree that the extract from the contract produced by the Respondent as late disclosure is not as clear as it might be, but find, based on Mr Bennett's oral evidence at the tribunal, (the honesty and bona fides of which the Claimant in his oral evidence expressly stated that he did not doubt), - and which had been anticipated by comments made by Mr Bennett in his meeting with the Claimant on 13/1/20 (page 253) – that there was a contract in place which provided that UKPN would pay the Respondent for work done by the Respondent's employees only at specified sites, which did not include the Respondent's Dartford office, and that whilst initially UKPN did not enforce this provision, by late 2019 at the latest UKPN was enforcing it.

18. For these reasons the Claimant could not be moved to Dartford on a permanent basis.

19. By early 2019 the Claimant was suffering from psoriatic arthritis. As a result of this condition the Claimant's joints and in particular his wrists, hands, ankles, and feet become swollen, stiff, and painful. This made travelling for long periods of time difficult for him because to mitigate his condition he needed to carry out physical exercise at least three times a week which he found he could not do working long hours (7.30am to 5pm) in London.

20. The Claimant's psoriatic arthritis was diagnosed by May 2019 and he started the first of a series of different medications, which unfortunately all in turn had severe negative side effects. As a consequence he suffered significant (50.5 working days) absences in 2019.

21. These absences which were unplanned caused problems for the Respondent's operation and Mr Bennett felt increasingly that he could not rely on the Claimant to attend work.

22. The Respondent has an attendance procedure which includes return to work interviews. This does not appear to have been followed on all occasions after the Claimant's returned from his extended sickness absences. Nor had there been any formal investigation before the Respondent commenced disciplinary proceedings.

23. On 1/10/2019 the Respondent (Mr Bennett) sent the Claimant an invitation to attend on 07.10.2019 a disciplinary hearing to discuss his absences. We accept that the Claimant was somewhat upset to receive this letter and had not received any prior formal notice that the Respondent was concerned about his levels of absence.

24. It had been envisaged that a RTW interview would be carried out by the Claimant's line manager, Niall, in which the Claimant would have been advised that a disciplinary hearing would be convened, however this had not happened and Mr Bennett apologised for this at the meeting on 7/10/2019.

25. The Claimant explained at the meeting that since May 2019 he had been prescribed methotrexate medication. He had been suffering side effects such as "excruciating headaches, nausea and fatigue." Notwithstanding those matters, the Claimant's consultant

was confident that the treatment would put his arthritic condition into remission. It was said that the time period was 6-9 months before significant improvement would be seen, so as the treatment had started in May, the improvement should be in November 2019-February 2020.

26. The Respondent decided to take no disciplinary action for the time being, and commissioned an OH report which was provided on 22.10.2019. It reported that the Claimant was continuing to experience side effects of his medication , which the Claimant said, would be the subject of further review with his consultant.

27. The only adjustment suggested by OH was relocation of the Claimant's work to an area with less travel. This aligned with the discussion that took place at the earlier hearing on 07.10.2019.

28. In October 2019, the Claimant's medication was switched from methotrexate to sulphasalazine. However, in November 2019 he was taken off the sulphasalazine also and put on yet further different medication.

29. There was a sickness absence review hearing on 20.11.2019. The Claimant at the tribunal claimed that Ms Allibhai's tone at the meeting was hostile. He did not complain about this at the time and we do not find that proved.

30. At the review there was a discussion about the Claimant's health, about the OH report, about what adjustments could be made and what to do next.

31. The agreed way forward was redeployment of the Claimant. The Claimant had previously said that he would consider any management role including Area Manager or District Manager subject to further details being provided. He was asked about suitable locations and answered "*Kent or Sussex across South East Water/Southern Water*". (These water companies were other clients of the Respondent operating nearer the Claimant's home).

32. It was agreed that there would be a four-week deployment period to look for an alternative role in a suitable location.

33. On 27.11.2019, having been chased for this by Ms Allibhai, the Claimant provided a CV to assist his job search. On 04.12.2019 Ms Allibhai emailed her counterpart Samantha Payne in HR who dealt with the SW/SEW contracts, to ask if there were vacancies. Samantha Payne told Ms Allibhai that the Respondent was likely to be making mass redundancies in relation to those contracts, and that there were no vacancies.

34. The Claimant himself who had worked for the Respondent for many years and had plenty of contacts in the Respondent's large work force, made his own enquiries and during the redeployment period spoke with two senior colleagues working on the water contracts, but neither was able to offer or identify a vacancy.

35. Ms Allibhai also sent the Claimant a comprehensive list of Respondent vacancies. The Claimant agreed that none of them were suitable for him.

36. On 13.01.2020 a capability hearing was held after the expiry of the (extended but unsuccessful) redeployment period. It was confirmed that there were no non-London based UKPN positions available. There were also no opportunities on the water contracts. There was no suitable alternative vacancy for the Claimant.

37. The Claimant advised that the medication he was on was not suitable, so he was awaiting to be referred for biological treatment, and that he should receive confirmation if he met the criteria at his next appointment on 30.01.2020.

38. Mr Bennett said that considering the previous history: the significant sickness absence, the unsuccessful trials of medication with significant side-effects (causing absence), he had significant doubts about the Claimant being able to maintain attendance, which had consequences for business performance.

39. The Claimant was given notice of dismissal with a 12 week notice period (expiring on 5/4/20) during which the search for suitable alternative work would continue. The Respondent's intention was that if during that time a suitable alternative vacancy was found, then the dismissal would be rescinded and the Claimant re-deployed, but if not, it would be left to take effect. The Claimant was placed on garden leave for the duration of his 12-week notice period.

40. He was offered a right of appeal against dismissal but chose not to appeal because he felt that the Respondent's actions had destroyed the implied term of mutual trust and confidence.

41. During the subsequent 12 weeks of the notice period the Claimant did not update the Respondent with the progress of his health. In fact his health situation remained difficult for him and he was no better during his notice period.

42. On 22/2/2020 the Respondent advertised for an "experienced Contracts manager" at Lenham/Snodland within the South East Water contract. A Contract Manager is senior to a Project Manager. The Claimant had never worked independently as a Project Manager of his own site, having usually carried out duties more akin to those of site manager with support from another project manager. He was not qualified to apply for or fill the role of Contracts manager, a view the Claimant must also have held because he did not apply for it or contact the Respondent about it.

43. Neither the Respondent or the Claimant identified vacancies which they thought were suitable or at least drew any to the attention of the other party during the notice period which ended when the Claimant's dismissal duly took effect on 5/4/2020.

44. Following the lockdown across the UK on 23/3/2020 caused by the pandemic, many of the Respondent's sites were closed and many staff put into furlough, but their redeployment back to sites after that was quite rapid.

45. The Claimant did not suggest at the time nor did the Respondent consider rescinding the Claimant's notice of dismissal and putting him on furlough in the period 23/3/20 to 5/4/2020.

46. Although the Claimant's biological treatment for his arthritis was approved, it was delayed and started only at the end of July 2020. By mid-August 2020 he was showing signs of improvement and he told us that he has steadily improved since then and is doing well now at the time of the tribunal hearing (April 2021).

47. The Claimant when carrying out his search and making applications for alternative work with third party employers did so only in the Kent/Sussex area and not in London and when applying in early 2021 for the new job which he recently obtained did so on the basis that his main work will be based in Dover.

48. At some stage the Claimant's wife found a job advert (page 249 et sec) dated 6/1/2020 published by the Respondent for "*Project Manager to join our UKPN contract based either*

from London or Dartford and covering London and the Home Counties". This advert was not drawn to the Claimant's attention by the Respondent at the time. However, we accept Mr Bennett's evidence that the advert had been initiated at a time when the Respondent thought there might be a significant expansion of UKPN work, which however had not materialised so the advert was withdrawn and no-one recruited; and in any event that the reference to "Dartford and the Home Counties" was a mistake, because all the UKPN work for which the Respondent required project managers was in London.

Relevant Law

Unfair Dismissal

49. Where the capability of an employee is established by the employer as a potentially fair reason for dismissal under section Section 98(1) and (2) of the Employment Rights Act 1996, then section 98(4) must be considered which provides as follows: "*Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –depends upon whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.'*

50. The range of reasonable responses test applies to the procedure and decisions taken by the employer.

Discrimination

Failure to make Reasonable Adjustments

51. Section 20 read with 21 provide that a person discriminates against a disabled person if he fails to comply with a duty to make reasonable adjustments.

52. Section 20(1)(3) provides that where a provision criterion or practice of As puts the disabled person concerned at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, it is the duty of A to take such steps as it is reasonable to have to take to avoid the disadvantage.

53. The EHRCs code at 6.28 sets out various matters which must be considered in determining whether it is reasonable to make an adjustment, ie effectiveness, practicability, cost, size of undertaking etc.

54. The test whether or not the Respondent has fulfilled or breached its duty to make reasonable adjustments is an objective one. The Respondent does not have to show that it consciously considered what steps it ought to take in the context of its statutory duty nor that it consulted with the Claimant about what reasonable adjustments should be made. The question is not one of awareness but what steps the Respondent took or did not take.

Disability Related Discrimination

55. Section 15 provides that a person discriminates against a disabled person if A treats B unfavourably because of something arising in consequence of Bs disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim

56. To be proportionate, a PCP must be both an appropriate means of achieving the legitimate aim and a reasonably necessary means of doing so. The burden of proof is on the Respondent .

57. It is for the ET to weigh the reasonable needs of the R's business against the discriminatory effect of the decision to dismiss and to make its own assessment of whether the former outweigh the latter

Onus of proof

58. Section 136 provides that if there are facts from which a court could decide, in the absence of any other explanation that a person has contravened a provision under the EA, the court must hold that the contravention occurred, unless the person shows that he did not contravene the provision.

Conclusions

59. Some return-to-work meetings were missed and there was no investigation stage before the Respondent started disciplinary proceedings in October 2019. No warning was given to the Claimant that the Respondent was going to start disciplinary proceedings before the invitation letter was received. The Tribunal as a whole agrees that these procedural matters alone are insufficient to render the dismissal unfair.

60. Also the Tribunal as a whole has considered but rejected the Claimant's submissions that the dismissal should have been further delayed because of the national government furlough scheme which was instituted in late March/early April 2020; and or because the Claimant was entitled to paid sick leave which he had not exhausted by the time of his dismissal.

Conclusions (by the members in the majority, the tribunal judge dissenting)
Unfair dismissal

61. The Respondent should not have decided to dismiss the Claimant as it did on 13/1/20. It should have postponed the decision, formalised a pattern of adjusted hours, and reviewed the situation on a monthly basis to consider whether the adjusted hours were working. In the meantime, it would see if either an alternative suitable job had become available or the Claimant's health had improved such that he could continue with his existing job in London on full hours.

62. It would have been reasonable to continue these monthly reviews for a maximum period of 12 additional weeks after 13/1/2020.

63. Ahead of the dismissal on 13/1/2020 the Respondent had inferred the Claimant's prognosis from the letters which the Claimant's Consultant Rheumatologist had produced following each consultation. The Respondent did not make specific enquiries of the Consultant Rheumatologist or their Occupational Health advisor to determine how likely it was that the Claimant's treatment would succeed and, if it would, how long this was expected to take. Given the length of service of the Claimant and in all the circumstances of the case it was incumbent upon the Respondent to ask this question and it was a misjudgement on their behalf not to do so. The formal process was too short and the decision to dismiss was over hasty. It is acknowledged that the range of reasonable responses is wide and this is a finely balanced decision. Nevertheless we conclude that dismissal lies outside that range.

64. Hence the dismissal was unfair.

Disability Discrimination

65. Section 15 EA 2010: It was not disputed that the Claimant's inability to maintain high levels of travelling arose from his disability and that he was treated unfavourably (dismissed) as a result. This was not a proportionate means of achieving a legitimate aim, when it was carried out, because it was premature, and the Respondent should have waited longer before deciding. As the Respondent did not wait, it acted in breach of section 15.

66. Section 20 and 21 EA 2010: It was not disputed that the Respondent applied a PCP of requiring the Claimant to travel to work in order to attend its sites, and that this PCP placed

the Claimant at a substantial disadvantage compared to non-disabled persons, by causing him to be dismissed because of his inability to comply.

67. It is accepted that there was no permanent suitable vacancy for relocation; and that the Claimant could not sensibly or reasonably carry out his role in the Dartford Office; and that the Contract's Manager role based in Lenham/Snodland was unsuitable, so these claimed adjustments referred to in the list of issues would not have been reasonable, nor would "trialling" have worked in relation to them. It was not reasonable to expect the Respondent to permanently reduce the Claimant's hours.

68. However, having regard to the Respondent's resources and headcount, it would have been a reasonable adjustment for the Respondent on a temporary and interim basis to allow the Claimant to reduce his work hours either at the beginning or end of the day at one of its UKPN sites in Central London. This would have allowed him to avoid travel in the rush hour, and provided more free time before and/or after commuting to obtain the physical exercise he required to mitigate his condition. It would not be reasonable to expect the Respondent to make this adjustment permanently, but it should have done so for at least 12 further weeks to see if this could work successfully. During this time the Respondent would also see if a suitable vacancy out of London nearer the Claimant's home became available, or if the Claimant's health recovered sufficiently so he could carry on performing his full role within normal hours in London. As the Respondent failed to provide this reasonable adjustment, it breached sections 20 and 21.

69. The Respondent suggests that reduced hours were tried at Wimbledon (South-West London) in 2018 and these were not successful. The Claimant gave unchallenged evidence that Wimbledon was a 2-hour commute each way from his home and the train schedules made it impossible for him to arrive in time for the 0730 start. He would then leave 30-50 minutes before the 1700 end time to help with the 2-hour journey home at a time when he was managing a spinal/neck condition, prior to his 2019 diagnosis of psoriatic arthritis. Mr Bennett gave evidence that, following the conclusion of the St Pancras project, the Respondent was operating other projects in Central London but we were not provided with details of the locations or scale of these. We were provided with no evidence that the Respondent had considered what sort of commute the Claimant would experience in travelling to these projects, or whether these projects were sufficiently large to enable cover to be reasonably provided when he was absent as a result of working adjusted hours.

Polkey assessment by members.

70. By the time of the expiry of the maximum additional period of 12 weeks (which expired in early April 2020) during which the Respondent should have waited and carried out regular reviews before deciding whether to dismiss, it turned out that no suitable permanent vacancy had been found and there was no material improvement in the Claimant's health, as he had not started his biological treatment. At that point it would no longer be reasonable to expect the Respondent to continue the temporary adjustment (which it has been found should have been put in place to accommodate the Claimant on an interim basis) and there would have been no further reasonable adjustment to be made. Hence at that point (after a further 12 weeks) the Respondent would have fairly and without unlawful discrimination dismissed him in any event.

71. Absent the unfairness and discrimination identified, the Claimant would still have been dismissed, but 12 weeks later.

72. Hence the compensatory award for unfair dismissal is limited to an additional 12 weeks after the EDT.

Remedy (awarded by the members in the majority, the tribunal judge dissenting)

73. The discrimination found is limited and of short duration and was a matter of poor judgment by the Respondent rather than deliberate or intentional action. The members consider that the proper award for injury to feelings is near the bottom end of the middle Vento band – namely £10000 including interest to date.

74. There is no basis for an award of aggravated damages. The Respondent's costs warning letter in the bundle is written in a reasonable way. Although disability was denied until a late stage in the tribunal proceedings, the Claimant was treated by the Respondent at work as if he was disabled.

75. The claim in the Claimant's schedule for a bonus is misconceived because no bonuses were awarded by the Respondent in 2020.

76. Having regard to information in the Claimant's updated Schedule of Loss, which was not otherwise disputed, the members award the following compensation

Unfair dismissal	
Basic award.	13387.50
Loss of statutory rights	400.00
Compensatory award based on losses over 12 weeks;	
Net pay	7725.24
Pension	819.96
PMI	1315.80
Life ins	87.48
Company car	1790.04
Injury to feelings for discrimination including interest to date	10000.00
Total	£35526.02

The damages for injury to feelings are not taxable and the remainder is below the £30000 threshold so no tax will be payable and there is no requirement for grossing up.

The Employment Tribunal (Recoupment of Benefits) Regulations 1996 apply as the Claimant has claimed Job seeker's allowance. The prescribed amount is £7725.24 and the difference between the prescribed amount and the total is £27800.78. The prescribed period is 5/4/20 to 28/6/20.

Dissenting conclusions of the tribunal judge in a minority.

Unfair Dismissal claim

77. The proper approach to the medical evidence is to ask whether a reasonable employer could find, in January 2020, from the material before it, that the Claimant could no longer maintain the levels of travel required to perform his role as a Project Manager. All the available medical evidence including the OH report and the consultant's letters which the Claimant had provided, and the Claimant's own statements prior to dismissal supported this conclusion.

78. There was full and reasonable consultation with the Claimant at meetings in October, November 2019 and January 2020.

79. The way forward had been agreed in the November 2019 meeting – namely trying to find the Claimant alternative work in his home locality, during a redeployment period which was then extended to mid-January. There was no complaint at the time that this was the wrong approach, or that some other approach should be taken, or that the Respondent was acting unreasonably.

80. The Respondent's decision not to wait longer was within a range of reasonable responses - there was no likelihood of an improvement in the foreseeable future. There had been a pattern going back to May 2019 of the Claimant trying one unsuccessful treatment after another and all he could offer on 13 January 2020 was an indication that at a later date he was to be assessed as to whether he could try another treatment, which might or might not work.

81. In light of the Claimant's attendance record the Respondent reasonably concluded that the Claimant could not be relied on to attend work on any particular day, and that it was likely that this would continue for an indefinite period. His safety critical role made unreliability particularly unacceptable.

82. The dismissal was not an accomplished fact on 13/1/20. Notice of dismissal was issued on the basis that the search would continue for the duration of the lengthy notice period, and the dismissal be rescinded if something turned up.

83. It is not reasonable to expect the Respondent to have given effectively the Claimant 6 months paid notice on garden leave by waiting without good reason for a further three months to elapse before then issuing the three months' notice of termination to which the Claimant was entitled.

84. For these reasons the dismissal was fair

Discrimination

85. Section 15 – For the same reasons as those in relation to the unfair dismissal claim, the dismissal on 13/1/20 was justified by the Respondent's business needs, and proportionate and not a breach of this section.

Section 21 and 22

86. There is no onus on employers to create a special job where none exists – and none did exist.

87. The tribunal judge finds that the adjustment identified as reasonable by the Members would in fact have been unreasonable, principally because this is not what the Claimant was asking for or what OH recommended.

88. While it is true that an adjustment can be reasonable even if it is not mentioned by the employee, this is a case in which the Claimant was stating very clearly at the time (and backed by OH) that his preferred and necessary adjustment was to have his work relocated so he did not have to travel into London at all. (That this is what he wanted as a permanent solution is also borne out that since his dismissal, and since his health was largely restored following his successful biological treatment- he still did not seek to return to London, but sought and obtained work in areas local to his home).

89. If in the face of this, the Respondent had told the Claimant in January 2020 that he had to carry on commuting into London (even with reduced hours and even as an interim measure) that in itself could have led to valid complaints of disability discrimination.

90. Furthermore, altering his hours at work in London had been tried at Wimbledon in 2018, but it had not worked successfully.

91. Furthermore, there was no evidence that there was in fact a suitable site where the Claimant could reasonably be allowed to arrive late or leave early.

92. In the event his health did not improve nor was a vacancy found so the adjustment would not have avoided but simply postponed the disadvantage (the dismissal).

93. Furthermore, to introduce such an arrangement would have required the Respondent to ensure that some other Project manager or similar safety certificate holder was made available every day to cover the Claimant's duties when he was absent. There is no evidence that the Respondent maintains a bank of spare project managers to provide cover. For the Claimant to be provided with cover in this way would have required the cover to be specially employed or pulled away from his or her duties on some other site leaving a gap there. It would also have undermined the utility of the Claimant's proper role and in effect amounted to creating a new role for the Claimant which the Respondent did not need.

94. There was no breach of the Equality Act 2010.

J S Burns Employment Judge
London Central
27/4/2021

For Secretary of the Tribunals

Date sent to parties : 27th April 2021