EMPLOYMENT TRIBUNALS

Claimant: **Mr R Allen**

Respondents: **(1) Allen Brothers (Fittings) Ltd.**
(2) Ms Elizabeth Adams

Heard at: **East London Hearing Centre**

On: **10 and 11 February 2021**
6 April 2021
17 May 2021 (Reserved decision in chambers)

Before: **Employment Judge B Elgot**
Members: **Mr S Woodhouse**
Ms J Houzer

Representation

Claimant: In person

Respondents: Mr S Butler, Counsel

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

The Tribunal having reserved its decision now gives unanimous judgment as follows:

JUDGMENT

1. The claim of unfair dismissal SUCCEEDS against the First Respondent. The remedy to which the Claimant is entitled shall be determined at a Remedy Hearing listed for one day on a date to be notified in due course. Case Management Orders for the Remedy Hearing will be promulgated separately.

2. The complaint that the First Respondent has failed to give a statement of employment particulars in breach of its duty under s4 Employment Rights Act 1996 SUCCEEDS and the amount of the award payable under s38 Employment Act 2002 will be determined at the Remedy Hearing.

3. The claim against both Respondents of victimisation under section 27 Equality Act 2010 DOES NOT SUCCEED and is DISMISSED.

REASONS

1. The parties are reminded that a complaint of unfair dismissal and the claim for compensation under section 38 of the 2002 Act can only succeed against the Claimant's employer which is the First Respondent. No discrimination claims have succeeded against the Second Respondent and she is therefore not liable for any remedy which is awarded in respect of the successful claims.

2. The Claimant originally made complaints of disability discrimination against both Respondents which have been dismissed because a tribunal has no jurisdiction to hear them. We decided on 10 February 2021 that the Claimant was not at the material time a disabled person within the definition set out in section 6 Equality Act 2010 (the 2010 Act). That judgment was sent to the parties on 18 February 2021 and written reasons sent out, at the request of the Claimant, on 22 April 2021.

3. The complaint of age discrimination and the claim for unpaid holiday pay have been withdrawn.

4. This leaves three extant claims of unfair dismissal and failure to provide written particulars of employment terms (against the First Respondent) and of victimisation under s 27 of the 2010 Act against both Respondents.

5. We had the benefit of written closing submissions from the Claimant and from Mr Butler on behalf of both Respondents. Mr Butler made it clear that his closing submissions are supplemental to the Respondents' Opening Note which was provided on 9 February 2021 and which we have also read.

6. The Claimant gave evidence on his own behalf and his witness statement is headed 'Statement of Case'. That Statement contains no substantive evidence about the Claimant's dismissal, the reason for it or the fairness or unfairness of it by reference to section 98 Employment Rights Act 1996 (the 1996 Act)

7. The Respondents had two witnesses. Ms Adams, the Second Respondent, gave evidence and was cross examined as was Mr Ian Little, the First Respondent's Financial Controller whose responsibilities include administration of the payroll function and thus necessarily the maintenance of absence and sickness records for the First Respondent's employees of whom there were approximately 25-30.

8. There is an agreed bundle of documents for the Hearing. As previously confirmed in the disability judgment, in correspondence between the parties, and between the Claimant and the Tribunal, we utilised the transcript of the 28 February 2019 meeting ('the transcript') which was commissioned by the Claimant and which is at pages 428-511 of the bundle.

9. In accordance with the usual practice of the Tribunal we read only those documents in the bundle to which our attention was drawn by the parties, the witnesses and the Respondents' representative. The Claimant produced some additional documentation on 6 April 2021 from the email address of his mother Mrs Lindsay Allen to which the Respondents did not object and which was admitted late into evidence. Those documents consist of Notes of a Directors' Board Meeting of the First Respondent on 10 April 2019 and a screen shot of some i-Messages between the Second Respondent and Mrs Lindsay Allen which messages were not referred to in evidence or cross examination. We read only the notes of the Board Meeting as we were requested to do by Mr Butler in his Closing Submission at paragraph 54c.

10. We have listened to the recording of the meeting on 28 February 2019 supplied by the Claimant.

Background Information.

11. The First Respondent is a relatively small business employing less than thirty people manufacturing and supplying specialist fittings and components for yachts and dinghies. The Second Respondent is the Managing Director and the other director is the Claimant's mother Mrs Lindsay Allen. It is a family business originally founded in 1958 by the Second Respondent's father Tony and his brother Glenn. In 2002 upon the death and then retirement of the founders the Claimant's father Kim Allen, Glenn's son, became the Managing Director during which time the Second Respondent worked for the company but did not have the extensive involvement which she now has as MD. Sadly, Kim Allen died suddenly and unexpectedly in 2015 leaving his wife and two sons, Richard and Edward. Ms Liz Adams, the Second Respondent, became the MD. Richard Allan is the Claimant in this case and is therefore the first cousin once removed of the Second Respondent. Both Edward and Lindsay Allen work in the business. Lindsay, Richard and Edward Allen are shareholders. The Claimant lives with his mother in the same house.

12. This case therefore unfortunately involves significant dispute between close family members.

13. The Claimant has worked on and off for the First Respondent since 2010 when he was 17, during the school and university holidays. He obtained an undergraduate degree in Mechanical Engineering and upon graduation in 2016 was keen to join the family business and work for the First Respondent full time. He was offered and accepted, on 12 May 2016, a job/apprenticeship in the Tool Room expressing himself to be '*delighted to start working in the tool room after my exams'*. By

November 2016 his role became Production Assistant and he was paid more. This is his first and only full time permanent job.

14. He has therefore worked for three complete years for the First Respondent from 1 June 2016 until the effective date of termination of his employment on 27 June 2019. He was dismissed on three weeks' notice from 6 June 2019 as appears by reference to the letter of dismissal which is page 156 of the bundle. He was not dismissed 'grossly' as he terms it. This was not a summary dismissal without notice for gross misconduct. The Claimant is mistaken in this analysis.

15. We wish to comment briefly on the Second Respondent's role as Managing Director and record that we find no conflict of interest between this overarching responsibility for '*design, engineering, production, sales, financing and managing customer relationships'* as she describes in her witness statement and her additional responsibility for Human Resources and employee relations. It is, in our industrial and judicial experience, quite common for an MD or Director of a small organisation to take on this HR role and we do not agree with the Claimant that there was an inevitable conflict of roles which prejudiced him or any other employee. Ms Adams also had access to specialist HR advice from an outside source whom she calls '*my HR lady'.*

<u>Unfair Dismissal.</u>

16. The Claimant had a poor attendance record in 2017 and 2018 as can be seen from the Respondent's documents at pages 177-200 of the agreed bundle. We find no reason to dispute the accuracy of these records despite the Claimant's criticisms of Mr Little's competence. The Claimant was absent by reason of sickness or as a result of unauthorised or unexplained leave for 165.5 hours in 2017 and 191.5 hours in 2018. He was not spoken to about this level of absence in connection with any attendance or disciplinary policy of the First Respondent.

17. Mr Little told us in relation to this period, '*I often had to liaise with the First Respondent's Accounts Assistant, Michelle Faraway, in order to calculate Richard's pay. Michelle often had to chase Richard's mother and Director of the First Respondent, Lindsay Allen, for medical certificates which we never received for significant periods of absence'.* He described this process as a *'constant source of grief'* for Michelle. It appears to have been quite normal for the First Respondent to request and the Claimant to supply fit notes/ medical certificates via his mother, Lindsay Allen, the other Director of the First Respondent with whom he lives. Mrs Allen is not and never was her son's line manager.

18. Mrs Lindsay Allen was not a witness in these proceedings and no witness statement has been produced setting out her evidence. The Claimant applied for the first time on the final day, Day 3 of the Hearing (6 April 2021) for her to be permitted to give evidence on his behalf. This application was refused because in the absence of a witness statement the Respondents had no knowledge of her evidence and no opportunity to prepare cross-examination. We were satisfied that

the Claimant has previously received clear guidance on the process for adducing witness evidence particularly as contained in the case management orders of Employment Judge Crosfill on pages 78-9 of the bundle which were made following a preliminary hearing on 6 March 2020. There is similar information in a letter from the Tribunal dated 18 January 2020.

19. We are satisfied that the Claimant knew of the First Respondent's requirements for reporting sickness absence and requesting holiday. He knew that it was his responsibility to report and document his absences and not the obligation of the First Respondent to 'request' fit notes. He said in cross examination that he knew that he could self-certify if he was unwell for 5 days or less and '*then it was a doctor's note'*. He received what he calls a '*blank copy'* contract of employment in 2016 while he was working in the Tool Room. He refused to sign it and 'left *it back on her [Liz] desk…because it pigeonholed me into the Tool Room role'.* We accept the Second Respondent's evidence that this document contained the same provisions relating to notification of sickness absence as can be seen on page 148. Ms Adams described how she wrote over the original contract and issued a second version referring to the Claimant's role as Production Assistant (page 158).

20. We are certain that the Claimant knew that he had to notify sickness by 12 noon on the first day of absence and that the notification should be made to his line manager who was the Production Manager Andy Dallard. Mr Dallard's responsibility was to notify the Accounts/Payroll staff. Mr Little described how '*Andy wrote it in his own little book'.* Mr Little said that alternatively an employee could contact the Accounts office direct. The same requirements applied to holiday requests. The Claimant knew of but failed to follow this procedure which mirrors the standard procedures in most similar workplaces.

21. Instead he said he regarded his absences as authorised by his mother without the necessity for communication via any other channel inside the First Respondent's organisation. He therefore strongly denies any unauthorised absences. We find the Claimant's evidence in this respect to be difficult to understand and unreliable. The First Respondent was prepared to accept Mrs Lindsay Allen as the conduit for the request for and production of fit notes but she was not the Claimant's manager, she was not in charge of personnel, workforce, payroll or financial matters and the Claimant knew that the correct procedure was as described by him in his own oral evidence and as recorded in the (unsigned) contract he saw in 2016.

22. The notes of the Directors meeting on 10 April 2019, supplied late by the Claimant but accepted into evidence on 6 April 2021, reveal the opinion of the First Respondent's advisors at paragraph 2.2 that the Claimant '*should be treated in line with his contract of employment and company policy the same way as any other employee would be treated in such circumstances'* including '*being asked to provide supporting medical certificates'.* The Directors (including Mrs Lindsay Allen) at this meeting were professionally advised by two other participants who are not part of the family, namely Messrs Holmes and Frostick who were invited to intervene.

23. Mr Holmes incidentally comments on the 28 February 2019 meeting between the Claimant, his mother and brother and the Second Respondent which is further referred to below. He says that he had '*heard the transcript'* and describes the subject matter of the meeting as *'RA's grievance with AD [Andy Dallard].* This is an important objective assessment of the main purpose and content of that meeting which supports our conclusion that no protected act as required by section 27 Equality Act 2010 and defined in subsection (2) occurred.

24. The Claimant will also have seen the clause in the 'blank' contract of employment which states that an unauthorised period of absence of 20 weeks or more may result in dismissal.

<u>Sickness absence in 2019</u>.

25. The Claimant was off sick on 8 and 9 January 2019. He returned for a few days and commenced another period of sickness absence on 16 January 2019 from which he never returned. He was dismissed on 6 June 2019. Irrespective of the nature and seriousness of his illness and the intervening conflict between the Claimant and (predominantly) the Second Respondent the Claimant failed to properly produce comprehensive sickness certification and fit notes for this period of absence.

26. There is no fit note for the period 16 January to 13 February 2019. The first such fit note covering the period 13 February to 12 March 2019 was produced in mid-February when Mrs Lindsay Allen brought it into the office. There was no communication from the Claimant in the accepted procedural manner. The second fit note covering the period 13 March to 7 April 2019 was not produced until 3 April. There is no fit note in the bundle covering the time between 7 April and 22 April. The third fit note in relation to the dates from 22 April to 9 July 2019 was not made available by the Claimant until 7 June 2019 the day after his dismissal.

27. These findings of fact in relation to the Claimant's conduct around absence reporting are relevant because we anticipate that the Respondent will make a robust argument that the Claimant's behaviour amounts to contributory fault entitling us to reduce the compensation awarded to him for his unfair dismissal. This is an issue which will be fully ventilated and argued at the Remedy Hearing

28. The Claimant was dismissed for what he himself describes at paragraph 34d of the Details of Complaint as '*failure to produce sick notes in a timely manner or at all'.* The letter of dismissal is at page 156 of the bundle, the author is the Second Respondent. It gives as the reason for dismissal '*your absence began on 16 June 2019,20 weeks ago and you have not provided sick notes to cover the whole period or communicated with me since the meeting in February…Following that meeting I wrote to you asking if you wanted to formalise your grievance, but I had no response'.*

29. It is clear that the reason for the Claimant's dismissal is one of the potentially fair reasons in section 98(2) Employment Rights Act 1996 (the 1996 Act) '*a reason relating to the conduct of an employee'.*

30. We have set out above our findings of fact relating to the Claimant's failure to report sickness and produce fit notes in a timely and conscientious manner compliant with the First Respondent's procedures. The letter of dismissal refers to further misconduct consisting of failures of communication which are stated to be part of the reason for dismissal.

31. We have seen and heard no evidence that the Claimant directly communicated with either Respondent during the period 16 January until mid- February 2019. If his argument is that he told his mother, as a Director of the First Respondent, about the reasons for his absence then there is no evidence before us in relation to any steps she took to communicate that information to the relevant personnel at the First Respondent or to the Second Respondent who had responsibility for HR matters.

32. However the Claimant was well enough to suggest and then convene the 28 February 2019 meeting which the Second Respondent describes in her witness statement at paragraphs 12 -14 as being a shareholders' meeting which developed into a series of '*accusations against me…four different options for legal action he could pursue'.* The Claimant was well prepared having taken advice. The Second Respondent was shocked to be required to answer those accusations including bullying, abuse, defamation and failures of the duty of care without advance notice of the nature or content of the meeting. The transcript and the recording illustrate her alarm and surprise but nonetheless there followed a discussion lasting one hour and fifteen minutes without resolution.

33. Irrespective of the merits of any of the said accusations the conclusion of the meeting was not as the Claimant describes in his Statement of Case that '[Liz] *would contact me for the continuation of the meeting'.* The Second Respondent does say at page 82 of the transcript '*I don't think we can resolve this right now, we'll have to come back and have another meeting. And I think we-I would like to get my HR lady to come along'.* She then asks the Claimant to send her in an email stating '*what I've done wrong and what you're actually-what your grievance is with me'.*

34. The Claimant's response is to agree –'*yes sure. That's fine then'.* Edward Allen also says '*I can send you that'.* The Claimant says Edward is referring to the recording. The meeting ended therefore with the Claimant agreeing to formalise and send his complaints in writing. He never did this. He thereafter did not communicate with the Second Respondent at all until his dismissal and did not contact the First Respondent through any appropriate channel. He did not formalise or lodge any grievance in writing.

35. His only contact was a coincidental encounter with the Second Respondent at the airport on 18 March 2019 as he was about to depart on a skiing trip with friends. We note that he obtained no authorisation from the Second Respondent (in charge of HR) his line manager or via the Accounts/Payroll office to take this holiday whilst on sick leave.

36. The Second Respondent did write to the Claimant. On 15 March 2019 she sent an email which is on page 140 enclosing an amended skills matrix. We find that this is not the action of a Managing Director who had already decided to engineer the departure of the Claimant by whatever means. At first the Claimant told us that he did not receive this email and he repeats this contention in his Closing Submission. However when cross examined he said he did see the attached new skills matrix because his mother (who had been copied in to the email of 15 March 2019, as was Edward Allen) showed it to him. It is surprising that he was shown only the attachment and not the covering email but what is clear is that the Claimant knew that the Second Respondent was taking steps to contact him and was not ignoring the problems raised by him on 28 February 2019.

37. He did not contact the First or Second Respondent to point out that he was not receiving correspondence sent to his work email address despite the fact that his brother Edward worked in IT for the First Respondent.

38. At page 144 there is a further email from the Second Respondent dated 24 March 2019 warning the Claimant of the possible consequences of his unauthorised absences and notifying him that the First Respondent is taking legal advice. The email refers to the missing 'medical certificates' and points out that the Claimant had been expected to return to work on 13 March 2019 when his latest fit note expired. The Claimant says he did not see this email and it was not copied to his mother, Lindsay Allen. He did however safely receive a recorded delivery letter two days later on 26 March 2019 (page 146) which again refers to his failures to provide proper comprehensive sickness certification. The letter also requests the Claimant to let the Second Respondent know if he wishes to take out '*a formal grievance against Andy Dallard or the Company'.* He did not reply to this letter or to the back- up email dated 27 March 2019 on page 153 but did send the backdated fit notes dated 3 April and 7 June 2019 (the latter was sent one day after his dismissal on 6 June).

39. By reference to the reason for dismissal which we have described above we are satisfied that the First Respondent had a genuine belief on reasonable grounds that the misconduct had occurred because there was prolonged (only partially certified) sickness absence on the Claimant's part, a failure of communication from him and no grievance was sent in writing.

40. Having established the reason for the Claimant's dismissal it is for us to determine whether the dismissal was fair or unfair taking into account what is sometimes called the 'fairness question' set out in s 98(4) of the 1996 Act. We have asked ourselves the question whether, taking into account all the circumstances, including

the size and administrative resources of the First Respondent, the employer in this case acted reasonably or unreasonably in treating the Claimant's misconduct as sufficient reason for dismissing him. In answering this question we have taken into account equity and the substantial merits of the case.

41. Mr Butler's statement of the law relating to Unfair Dismissal in paragraphs 43 -50 of his Closing Submissions is accepted as comprehensive and accurate. We agree that there is a single unitary question of reasonableness as he terms it. We find the dismissal to be unfair both substantively and procedurally for the simple reason that the Claimant was given no fair and reasonable opportunity to explain and/or mitigate his conduct prior to his dismissal.

42. The circumstances were that the First Respondent knew that he was depressed, unwell, miserable and distressed, with numerous concerns about his work and his working relationships. It was unfair and outside the band of reasonable responses to dismiss him without further information, without affording him the possibility of advocating on his own behalf (with representation if wanted) and without having given him advance warning that he faced the ultimate sanction of dismissal.

43. S207 Trade Union and Labour Relations (Consolidation) Act 1992 does require us to take into account any provisions of the ACAS Code of Practice on disciplinary and grievance procedures ('the ACAS Code). In this connection we are certain that in failing to formally inform the Claimant of the disciplinary case he was facing, warn him that he faced potential dismissal and carry out a reasonable investigation into the facts of the alleged misconduct the First Respondent acted unfairly. The most obvious step was to have arranged timely investigation and disciplinary meetings with appropriate officers of the company which were compliant with the procedural requirements for exchange of documentary and other information, possible witness evidence, and the chance for the Claimant to be accompanied. The First Respondent is referred to paragraphs 5-17 of the Code.

44. It is not fair for an employer to anticipate what it is going to hear from any particular employee and thus discount the possibility that further information may emerge. We do not agree that it was within the range of reasonable responses for the First Respondent to conclude in all the circumstances that any further investigation, discussion and/or meeting with the Claimant after 28 February 2019 would be futile and achieve nothing. The breakdown of the relationship between the Claimant and the Second Respondent did not mean that there was no possibility of another representative of the First Respondent meeting with him in order to understand his response to the disciplinary case against him. As stated above the First Respondent had the advice and assistance, for example, of Messrs Holmes and Frostick.

45. The letter of dismissal dated 6 June 2019 makes no mention of any opportunity for the Claimant to appeal his dismissal and in this respect there is a further failure by the First Respondent to take into account the relevant provisions of the ACAS

Code. We find that the Claimant however took no steps to request an appeal. His evidence that he took certain steps to ask for an appeal is not consistent or credible.

46. In response to cross examination as to why he had not appealed his dismissal the Claimant gave answers which are unsupported by any documentary or witness evidence. He says that he asked his mother to intervene; she replied that she had been 'forbidden' to do so. There is no witness statement from Mrs Lindsay Allen to confirm this. The Claimant says that he then asked for a '*third party'* appeal to an independent person. He said '*I suggested it to Lindsay who went to Liz and was told that the decision had been made'.* We note that this account is not contained in the Details of Complaint or in the Claimant's witness statement/Statement of Case. Counsel for the Respondents asked the Claimant why he had not requested an appeal in writing to which the response was '*there was very little point, it would have been an exercise in futility'.*

47. The Claimant also made the wholly un-meritorious claim that the mere submission of a fit note on 7 June 2019 was sufficient to amount to a request for an appeal. We find that it was not an appeal in all the circumstances since the fit note was not accompanied by any other note or letter of request.

48. The complaint of unfair dismissal succeeds and a further hearing via CVP to determine the appropriate remedy will be listed in due course with a Notice of Hearing being sent out. The Claimant seeks reinstatement or reengagement. A separate case management order will be promulgated to enable efficient preparation for the Remedy Hearing.

Victimisation – The Protected Act

49. In order to succeed in his claim of victimisation against both Respondents the Claimant must show that the component elements of section 27 Equality Act 2010 are in place. The *statutory provision is as follows:-*

' (1) A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act ,or
(b) A believes B has done, or may do, a protected act.

(2) Each of the following is a protected act…..

(d) making an allegation (whether or not express) that A or another person has contravened this Act'

50. The Case Management Summary prepared by Employment Judge Crosfill makes it clear at paragraph 7.4 that he was told that the '*Claimant relies on complaints he raised on 28 February 2019 as being a protected act'*. This is also what is stated in the Details of Complaint at paragraph 40 which states '*the Claimant contends that*

him raising his concerns in meeting (sic) on 28 February 2019 amounted to a protected act'. The 'concerns' are set out at the preceding paragraph 23. It is clear therefore that subsection (2) (d) is the relevant part of section 27 Equality Act 2010.

51. It is also immediately clear from paragraph 23 of the Details of Complaint that almost all of the matters raised by the Claimant on 28 February 2019 do not, on their face, amount to the making of an allegation that there has been a contravention of the 2010 Act. That paragraph refers to defamation of character, bullying, lack of duty of care, being made to feel unwelcome, undervalued, and '*like he had no future there'*. There is only one phrase which references the equality legislation and that is '*discriminated against on the grounds of his age'*. The Claimant is unrepresented but has had advice from the Citizens Advice Bureau and has previously instructed two separate sets of solicitors most recently in October 2019. We conclude that he in all likelihood received some legal advice about the definition of victimisation in section 27.

52. The Claimant, under cross examination, described the purpose of the meeting on 28 February 2019, initiated by his mother to re-allocate shareholdings, and also by him '*to make my health better and to prevent suicide by resolving work issues as I had been advised by doctors'.* He was not able to identify under cross examination any particular allegation or assertion of facts which he made in that meeting which might be capable of amounting to a breach of the 2010 Act. He said, in relation to the reason for his dismissal, that there was '*prejudice, issues and characteristics but not one prejudice which sticks out from another'.* We interpret this answer to indicate that the Claimant himself cannot identify the protected act which he pleads as causative of the detriment of dismissal.

53. When asked by the Respondents' counsel to identify allegations of discrimination in the transcript the Claimant referred to the '*start of the meeting…I can't see any other part except at page 50* [of the transcript] and when asked again by the Employment Judge he pointed out the text at page 28 of the transcript. He said *'I raised that it was work issues that were causing my depression. I went into the meeting for that purpose and was told I had no future'.* We have analysed the transcript and listened to the recording carefully to see if we can identify any allegation of a contravention of the 2010 Act. The 'start' is at page 428 of the bundle, page 50 of the transcript is at page 477 of the bundle and page 28 of the transcript is page 455 of the bundle.

54. (We can see no part of the transcript and heard no part of the recording where the Claimant was told he had no future with the First Respondent. He has exaggerated this part of his evidence)

55. The Claimant opened the 28 February 2019 meeting, at page 428 of the bundle where his transcript commences, by describing the cause of his most recent illness (since January 16th 2019) as the production of a' skills matrix' by the Second Respondent. This is the First Respondent's document listing each employee's

training record, ability to operate specialist machinery and what the Claimant calls 'general skills'. It is required for the achievement of the ISO 9001 quality assurance accreditation. The ISO 9001 certification was part of the Claimant's role. The Claimant is mortified that it shows him to have '*the lowest skill level in the company'.* He describes the document as '*defamation against me and my character*' and later refers to slander. The Claimant does during the meeting that his depression had been made worse when he saw it.

56. However, informing the Respondents that he was ill through depression and alleging that the Second Respondent's completion of the skills matrix was the cause does not amount to an allegation that she or the First Respondent were contravening the 2010 Act. The Claimant did not either at the start of the meeting or at any later part describe his depression as a disability by reference to the Equality Act definition nor identify himself as having the protected characteristic of disability. He made no specific or particularised allegations of disability discrimination at the start of the meeting.

57. Page 50 of the transcript (page 477) does not refer to any equality concerns at all. Page 28 (page 455) makes no reference to the 2010 Act or any alleged contravention of it. The Claimant says he has been depressed because the matrix says he has no useful skills and '*because I feel like I've got no future. I feel like, no matter what I do, I'll always have you telling me that I've got no experience'.*

58. We conclude that the relevant parts of the transcript identified by the Claimant himself in his evidence do not mention any allegation (whether or not express) that either or both of the Respondents have contravened the 2010 Act.

59. As stated in paragraph 22 above the professional advisors on the Board of the First Respondent perceived the purpose of the 28 February 2019 meeting to be an airing of the Claimant's previous complaints from 2017 against Mr Andy Dallard. There was indeed extensive discussion of these historic issues. Page 51 of the transcript (page 478 of the bundle) records the Claimant saying he has become ill because of the Second Respondent 'taking no action' and, in context, this does seem to be a reference back to his previous complaints about his treatment by Mr Dallard.

60. We have therefore considered whether any protected act can be identified in relation to the connection made by the Claimant in the 28 February 2019 meeting between his desire to resolve his work issues and the previous concerns he raised in June 2017 which are recorded in emails at pages 100 -104F of the bundle.

61. At page 102, in an email to the Second Respondent dated 20 June 2017 timed at 10:18, the Claimant writes to complain bitterly about the behaviour of his line manager Andy Dallard, Production Manager, which behaviour, he says, is '*increasingly challenging'.* The Claimant says that Andy talks behind his back,

slanders and tells lies about both him and his mother and seeks to damage their reputations in front of the rest of the workforce.

62. In fact the Second Respondent was shortly thereafter advised by the First Respondent's HR Advisor, Linda Percival, to treat this as a grievance; that procedure was not for whatever reason implemented in 2017.

63. However nothing in the Claimant's complaint/putative grievance against Mr Dallard in 2017 makes any mention of age or disability discrimination nor does it speak of any past, current or future potential contravention of the Equality Act 2010.

64. The Second Respondent wrote back on the same day (18 June 2017 at 13:01) to acknowledge the Claimant's difficulties and frustrations and thank him for '*opening up'*. There is no reference in her email response to any alleged contravention of the 2010 Act.

65. She emailed again the following day on 19 June 2017 at 12:59 (page 104F) to express her concern that the Claimant is ill and suffering stress. '*I'm worried about you'* is the first line of that email in which she acknowledges the difficulties of working in a family business with all the expectations it entails. By this date the Claimant had been absent as a result of stress and anxiety since 13 June 2017.He returned to work on 23 June 2017 after six days' absence.

66. We conclude that this 2017 correspondence, identified as central to his case by the Claimant himself, and the incidents described by the Claimant therein does not make any reference to contravention of the Equality Act 2010.The Claimant instead describes an extremely fractious relationship with Mr Dallard whom he accuses of demeaning and undermining him behind his back by '*telling lies'* and refusing to acknowledge that he has any skills or knowledge.

67. Therefore,when the Claimant refers again in the 28 February 2019 meeting to his previous grievances of '*workplace bullying'* and a pattern of '*defamation of character'* by Andy Dallard we are unable to conclude that the later revival of these complaints at the meeting, even in the context of a worsening of his depression, constitutes an allegation under s 27 (2) (d). Characteristically the Claimant in 2019 escalates the description of these grievances above and beyond the original language of the 2017 complaints and speaks of being '*completely disregarded' 'abused day in, day out'* with no protection or care being afforded to him by the Respondents.

68. In the transcript the Claimant does make specific reference to age discrimination at page 429. This is a claim which he has withdrawn in these proceedings. He gives no particulars of this alleged contravention of the 2010 Act. The relevant case law is instructive- an un-particularised allegation of discrimination is not sufficient to

amount to a protected act. The case of Fullah v Medical Research Council in 2013 UKEAT/0586/RN illustrates this point. Mr Fullah made complaints that he had been psychologically bullied, harassed, victimised and discriminated against but made no connection between this treatment and his race as a black man. Similarly the Claimant makes no connection in the 28 February 2019 meeting between the ill treatment he alleges and his age. He merely makes an assertion of age discrimination without specificity. It is not an '*allegation [asserting] facts capable of amounting in law to an act of discrimination'*. We agree with Mr Butler that the relevant paragraph of HHJ McMullen's judgment in Fullah can be found at paragraph 22.

69. HHJ Mc Mullen refers to the case of Waters v Commissioner of Police for the Metropolis [1997] ICR 1073 in which the judge, Waite LJ, explains the reason for this principle of law when he says '*charges of…discrimination are hurtful and damaging and not always easy to refute. In justice therefore to those against whom they are brought it is vital that discrimination, including victimisation, should be defined in language sufficiently precise to enable people to know where they stand before the law'*

70. The more recent case of Chalmers v Airpoint Ltd EATS 0031/19/SS reinforces the requirement for clear words in order for any allegation to amount to a protected act. In this case Mrs Chalmers, recorded as articulate and well educated with some experience in HR matters, referred only to incidents which 'may' be discriminatory and gave no further details. The remainder of her grievance was expressed in clear terms.

71. The factual matrix in Chalmers is similar to the situation in this case. The Claimant is highly educated and was in receipt of expert advice. In the transcript at page 2 the Claimant speaks of four 'options' advised to him by 'Citizen's Advice' and says '*the second option is that there has been age discrimination against me and also a lack of duty of care'.* He does not go on to identify or give details of any precise allegation of age discrimination. He refers to the 'option' of litigation on the topic of age discrimination. By contrast he gives specific particularised information about many of his other complaints of bullying etc. His comment about the option of an age discrimination claim is insufficient to amount to a protected act under section 27 (2) (d) of the 2010 Act.

72. In view of our finding that there no protected act the claim of victimisation cannot succeed against either Respondent and is dismissed.

Failure to provide a written statement of employment particulars

73. We are certain that the Claimant was provided with a statement of initial employment particulars which complied with the stipulations in section 1 of the 1996 Act. He agrees that he was given a contract of employment in 2016 when he first when to work in the tool room. He refused to sign that contract, handed it back and kept no copy. However the legal requirement is only to give the written

statement of particulars; there is no obligation under section 1 to obtain an agreed signed version acceptable to the employee. The fact that the Claimant did not sign it is irrelevant.

74. However, the Claimant's job title did change. He was appointed as the Production Assistant and he did receive at least one pay rise. Section 4 of the 1996 Act requires an employer to give a written statement containing particulars of this type of change within one month of the changes. Pages 147-152 of the bundle is an amended contract which the Second Respondent intended to enclose with her letter to the Claimant dated 26 March 2019; by mistake it was not actually enclosed and the Claimant did not see it. He did not enquire why it had not been enclosed or ask where it was. We are satisfied however that it contains substantially the same terms and conditions as were set out in the 2016 contract because the Second Respondent told us in evidence that she over wrote the 2016 version.

75. In view of the fact that the Claimant's complaint of unfair dismissal has been upheld we have the jurisdiction, granted by section 38 Employment Act 2002, to make an award of compensation for this breach of the section 4 requirement and we consider it just and equitable in the circumstances to award the mandatory minimum amount of two weeks' pay. There are no circumstances which make it just and equitable to award the higher amount of four weeks' pay. The Claimant was notified of and knew the main terms and conditions of his employment. The error in failing to formally notify him in writing of a change in his job title and salary occurred as the result of a mistake. There is no evidence that it was an act of falsehood or deceit as he claims. The Claimant already knew of the relevant changes in any event.

Employment Judge B Elgot
Date: 8 June 2021