



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Benjaminas Ramanauskas

v

Amazon UK Services Limited

Heard at: Norwich

On: 19, 20, 21, 22 October 2020
10, 11, 12 May 2021
7, 8, 9 June 2021, discussions in Chambers

Before: Employment Judge Postle

Members: Ms J Costley and L Gaywood

Appearances

For the Claimant: In person

For the Respondent: Mr Salter, Counsel

RESERVED JUDGMENT

1. The Claimant's claims under the Equality Act 2010 for the protected characteristic of associative discrimination, particularly victimisation, are not well founded.
2. The Claimant was not constructively dismissed.

RESERVED REASONS

Background

1. The Claimant presented his claim on 7 November 2018, he brought claims of victimisation and constructive dismissal against the Respondent under the Equality Act 2010 and the Employment Rights Act 1996. The claims relate to how he perceived his treatment by the Respondent, which was as the Claimant asserts, a direct result of assisting another employee who was disabled in various Performance Management meetings which led to the Claimant resigning from his employment.

2. Given the date the claim form was presented (7 November 2018) and the dates of Acas Early Conciliation (date A. 1 October 2018 and date B. 22 October 2018), any complaint about something that happened before 2 July 2018 is potentially out of time so that the Tribunal may not have jurisdiction to deal with it.
3. The matter came before Employment Judge Tynan on 18 November 2019 for a Case Management Preliminary Hearing at which the issues to be determined were set out in his Order.
4. The specific issues the Claimant pursues are a claim under Section 27 of the Equality Act 2010, victimisation and protected acts, alleged as follows:
 - a. On 25 April 2018:
 - i. accompanying Mrs Jolanta Kostygoviene in the disciplinary formal Health Review meeting;
 - ii. after the meeting above, when speaking to Martina Urban and Roberto De Vita regarding an Occupational Health Referral; and
 - iii. informing Mrs Jolanta Kostygoviene about the Equality Act 2010 and the protection it offered.
 - b. On 29 April 2018, in preparing Mrs Jolanta Kostygoviene's Appeal;
 - c. On 16 May 2018, in supporting Mrs Jolanta Kostygoviene at an Appeal meeting;
 - d. On 8 August 2018, in supporting Mrs Jolanta Kostygoviene at a further Appeal meeting;
 - e. On 10 September 2018, in preparing Mrs Jolanta Kostygoviene's Grievance letter;
 - f. On 29 September 2018, in attending Mrs Jolanta Kostygoviene's first Grievance meeting and supporting her at the meeting;
 - g. On 16 October 2018, in attending Mrs Jolanta Kostygoviene's second Grievance meeting and supporting her at the meeting;
 - h. On 24 October 2018, presenting Mrs Jolanta Kostygoviene's application for Acas mandatory conciliation and agreeing to represent her;
 - i. On 30 October 2018, attending Mrs Jolanta Kostygoviene's third Grievance meeting and supporting her at the meeting;
 - j. On 5 November 2018, providing Acas with full information regarding the case; and

- k. On 24 November 2018, presenting Mrs Jolanta Kostygoviene's ET1.
5. The Claimant asserts that as a result of the above alleged protected acts, the Respondent carried out the treatment set out at paragraphs 4a – q. During the course of this Hearing, particularly on the penultimate day, the Claimant agreed to withdraw the following allegations, namely 4b, 4e, 4g and 4n. They stand as dismissed upon withdrawal.
6. The case can be further refined in that the Respondent accepts that any of the protected acts relied upon are capable of satisfying the definition and in fact do satisfy the definition.
7. In this Tribunal we have heard evidence on behalf of the Respondents from:
- Miss A Plimely, HR Advisor;
 - Maris Olsteins, the Claimant's Line Manager from 2 January 2018;
 - Chris Preston-Jones, Senior HR Manager;
 - Martyna Urban, Operations Manager;
 - Mark Beagley, Operations Manager;
 - Roberto De Vita, Area Manager;
 - Richard Thompson, Senior Operations Manager;
 - Marzena Orzechowska, HR Business Partner; and
 - Isabela Stankiewicz, Area Manager.

All these witnesses giving their evidence through prepared Witness Statements.

8. The Claimant gave evidence through a prepared Witness Statement. There were also Witness Statements from Mrs Jolanta Kostygoviene and a Witness Statement from the Claimant's partner Ms Rutkauskaite, however, the Respondent's Counsel indicated that these statements had no relevance to the issues to be determined and he did not require to cross examine those witnesses.
9. The Tribunal also had the benefit of a Bundle of documents consisting of three lever arch files, totalling 755 pages.

Credibility

10. The Respondent's witnesses underwent lengthy and detailed cross examination from the Claimant, much of which was irrelevant cross examination covering all aspects of their evidence and the Claimant's employment. The Tribunal found the Respondent's witnesses' evidence was consistent with the contemporaneous documents. The Respondents witnesses were also prepared to concede points that might be considered in the Claimant's favour. For example:

- a. Mr Olsteins who accepted he could have been clearer during meetings regarding the Stage 2 Performance Improvement Plan;
 - b. Mr Beagley who was critical of the original Performance Plan, that it was a poor plan and made no bones about it. In fact he went on to say he would have expected better of Mr Olsteins and Ms Urban. However, his role was not to investigate whether the Claimant should be on a PIP, but whether the Claimant had been bullied and mistreated in any way. In Mr Beagley's opinion, the Claimant had been put on a Performance Plan with good reason because he was not doing what he should have been doing as a Team Leader and therefore his view is not only just a performance issue, but a conduct issue. His view, would have given more time for the Claimant to improve his performance; and
 - c. In the case of Ms Orzechowska, it would have been easy for her to deny her error at the outset and leave it for another person to find the truth of the matter between the use of the word 'off' and 'of', yet she declined to do so. She immediately accepted that she was wrong.
11. Whereas the Tribunal found that the Claimant's evidence under cross examination, he would attempt to avoid answering simple straightforward questions, particularly in relation to the lack of any evidence of the Respondent's witnesses' actual knowledge of the alleged protected acts. The Tribunal goes further, that the Claimant's evidence was evasive at times and the Tribunal had to warn the Claimant on numerous occasions if he failed to answer a question that had been put to him three times, the Tribunal could well draw its own inferences from the failure to answer a straightforward question.
12. It was noted, despite the Tribunal's prompting, the Claimant in cross examining the Respondent's witnesses failed to challenge much of the evidence on key issues including causation. Examples of this are:
- a. Miss Plimley was cross examined from 1000 until 1122 on Tuesday 22 October 2020 and was not asked any questions about her knowledge of any of the alleged protected acts;
 - b. Mr Olsteins also denied he was aware of any of the protected acts when he was cross examined from 1125 until 1505 on Tuesday 20 October 2020, despite this the Claimant sought to introduce new evidence that Mr Olsteins was aware of the protected act yet did not challenge much of Mr Olsteins' statement despite being reminded to by the Tribunal;
 - c. The fact that Mr Preston-Jones was aware of the Claimant's assistance to Ms Kostygoviene, who was not cross examined about the impact this had on his decision;

- d. Ms Urban gave evidence from 1002 until 1043 on Wednesday 21 October 2020, she was not asked a single question about the alleged protected acts on 25 April 2018. Furthermore, she was not challenged about many of the matters in her Witness Statement despite numerous reminders from the Tribunal, despite this the Claimant confirmed that he had no questions for the witness;
 - e. Mr Beagley, gave evidence from 1045 to approximately 1219 on Wednesday 21 October 2020, was not challenged over his lack of knowledge of the Claimant's involvement with Ms Kostygoviene or the accuracy of the notes that were produced for that meeting;
 - f. Mr De Vita gave evidence from 1219 until 1245 on Wednesday 21 October 2020 and was not cross examined on the alleged protected act of 25 April 2018, or any aspect of causation;
 - g. Mr Thompson gave evidence from 1000 until 1005 on Thursday 22 October 2020, the Claimant did not challenge any part of his evidence and said he had no questions. Employment Judge Postle raised this with the Claimant and the response was,

“Mr Thompson has already put in details of how he came to the Grievance outcome point by point and I don't think I can argue with what he says and I don't have anything in his Witness Statement to counter him”;
 - h. Ms Orzechowska gave evidence from 1019 until 1054 on Thursday 22 October 2020 and was not challenged about causation; and
 - i. Ms Stankiewicz was cross examined from 1005 until 1255 on 11 May 2021 and again the Claimant did not cross examine this witness on her knowledge of the protected acts or the impact they had.
13. The Claimant was given every opportunity to put his case to the Respondent's witnesses.

The Facts

- 14. The Respondent is an online retailer with a Distribution Centre in Peterborough at which the Claimant was employed as a Tier 3 Associate (which is a Team Leader) at the Centre and was responsible for the performance and management of his Team, supporting the Daily Management Sortation Team, tracking the work of his Team and escalating any issues to his Line Manager.
- 15. The Respondent operates a Performance Improvement Plan (pages 146 to 153), (PIP), process for those of its employees whose Team and / or

whose own performance is failing to meet the standards required of them. The process will involve the Respondent meeting with the employee, discussing where the individual is failing, advising on how these issues can be addressed and agreeing future targets and objectives in a time frame in which they are to be achieved. If the targets and objectives are not met, the employee passes onto the next stage of the process.

16. It will normally be a Line Manager who will decide to initiate a PIP and under the PIP guide it starts with an informal discussion regarding the employee's performance, Stage 1, and progresses through the following Stages if their performance does not improve as required:
 - a. Counselling - Stage 2;
 - b. First formal warning – Stage 3;
 - c. Second formal warning – Stage 4;
 - d. Final written warning – Stage 5; and
 - e. Termination – Stage 6.
17. In mid-March / April 2018, the Claimant was subject to a Stage 1 process in which an informal conversation took place between the Claimant and Mr Olsteins about his own and that of the Team's performance.
18. By 22 April 2018, in the absence of required improvements in performance, Mr Olsteins took the decision to move to Stage 2 of the PIP process by holding an informal counselling session with the Claimant.
19. On 25 April 2018, the Claimant accompanied Mrs Jolanta Kostygoviene to a formal Health Review meeting. Following which the Claimant prepared her Appeal letter on 29 April 2018 following the Health Review meeting (page 255). At that stage the Claimant did not mention the Equality Act 2010 to anyone at the Respondent, as on his own omission he was not aware of that Act at that time.
20. On 27 April 2018 and 11 May 2018, Mr Olsteins held further Review meetings with the Claimant to discuss his progress towards the targets and objectives following the Stage 2 informal counselling sessions in the PIP process.
21. On 2 June 2018, Mr Olsteins sent a letter inviting the Claimant to a Stage 3 First Formal Performance meeting on 15 June 2018, again as part of the PIP process (page 407).
22. On 14 June 2018, the Claimant submitted a Grievance concerning Mr Olsteins who was to conduct the Stage 3 PIP meeting. As a result of the Claimant's Grievance, the Stage 3 PIP meeting was postponed, the

Claimant's Grievance (page 411) did not raise any allegation that he had been subjected to any unlawful discrimination or unlawful victimisation.

23. The policy at the Respondent's in relation to Grievance meetings does not allow a work colleague as a companion. However, Mr Beagley who was investigating the Grievance made it clear that had the Claimant requested a companion to attend, he would not have objected. Mr Beagley, prior to the involvement in investigating the Claimant's Grievance had no prior knowledge of the Claimant and had not interacted with him. The Grievance Policy (page 156) makes it clear about being accompanied to a Grievance meeting.
24. On 15 June 2018, Ms Tracey Redout HR, hand delivered a letter to the Claimant inviting him to an initial Grievance Investigation meeting on 20 June 2018 (page 419).
25. Prior to the Grievance Investigation meeting with the Claimant on 20 June 2018, Mr Beagley reviewed all documentation that the Claimant had submitted in support of his Grievance. Mr Beagley then visited the Claimant's department and spoke with Paul Bourke, another Team Leader in the Claimant's department, who took Mr Beagley through the department's processes and systems so that he could fully understand the tasks the Claimant was expected to perform as a Team Leader.
26. Mr Beagley noted there were three key elements to the Claimant's Grievance and they were:
 - a. the Claimant's treatment in relation to two unauthorised absences on 21 and 22 March 2018;
 - b. communication with the Claimant around his Performance Improvement Plan process and the expectations of the Claimant under that process; and
 - c. the alleged behaviour of Mr Olsteins; Miss Amanda Plimley who at the time was an HR Advisor and had been assisting Mr Olsteins with the Claimant's Performance Improvement process; and Ms Urban an Operations Manager and Mr Olsteins' Line Manager; as to how they had behaved towards the Claimant which the Claimant described as bullying.
27. The initial Grievance meeting with the Claimant on 20 June 2018 went ahead, Ms Redout attended. It was a very long meeting. Mr Beagley noted that the Claimant had a tendency to veer off the subject when asked direct and straightforward questions. Indeed, other than responding to questions, the Claimant read parts of his original Grievance out aloud and would then steer the conversation towards what the Claimant would get if,

"...went to the Courts".

28. Following Mr Beagley's further investigation into the actual PIP plan, he concluded that there was no more than miscommunications. During the meeting Mr Beagley repeatedly asked the Claimant what specifically he felt the individuals he was complaining about had done that amounted to bullying (page 433 – 435). However, the Claimant did not provide any concrete examples of bullying.
29. Following the Grievance Investigation meeting on 20 June 2018 with the Claimant, Ms Redout typed up the meeting notes, provided Mr Beagley with a copy to sign which he did (page 437). The Claimant had added some hand written amendments to those notes. As far as Mr Beagley is concerned the meeting notes for the Claimant's amendments represented what had been discussed and they were not in any way misleading or false. The notes were not verbatim, it is not the Respondent's practice to take verbatim notes at Grievance meetings. What is clear is that the Claimant's amendments appeared to be only a typo and those amendments do not affect the investigation or indeed the outcome of the Claimant's Grievance.
30. Mr Beagley, then on 21 June 2018, held Investigation meetings with Mr Olsteins in relation to the original Grievance (page 455). Ms Redout who was in attendance for HR and took notes. Mr Beagley was able to ascertain from Mr Olsteins' meeting that there were communication failings from the early informal stage of the Claimant's Performance Improvement process. Mr Olsteins felt unable to properly spell out why the Claimant was still not meeting the required standards and Mr Beagley put this down to the fact that Mr Olsteins was relatively new to the Performance Management process and although errors had been made by him, there was no evidence that the mistakes were malicious or of a bullying nature.
31. On 21 June 2018, Mr Beagley then had a meeting with Miss Plimley, again with Ms Redout in attendance to provide HR support and to take notes (page 459). Miss Plimley had merely supported Mr Olsteins in implementing the Claimant's Performance Improvement Plan from an HR point of view. Miss Plimley was able to say that the original plan had changed because the Claimant wanted some relatively minor changes to the wording of the plan, but again there was no suggestion of any bullying on her part.
32. On 21 June 2018, the Claimant then emailed Ms Redout and Mr Beagley a text based skype conversation the Claimant had had with Mr Olsteins on 21 June 2018 (page 466) and then submitted the document with the heading

“New instants of rising pressure by my Manager (Mr Olsteins) while investigation of the bullying case is still not closed” (page 475).
33. However, Mr Beagley upon viewing the full conversation, could see that Mr Olsteins was simply asking the Claimant about Team Performance data and the Claimant unhelpfully quoted individual performance measures

which was not the question that was being asked. In any event, it was the sort of question that a Manager would be expected to ask his Team Leader.

34. On 27 June 2018, Mr Beagley met with the Claimant to discuss the possibility of paid leave pending the conclusion of Mr Beagley's investigation into the grievance, given also the underlying tension between the Claimant and Mr Olsteins. The Claimant confirmed he was happy to go on paid leave on the proviso he would be kept updated on the progress of the investigation into the Grievance.
35. Mr Beagley then had further meetings with Ms Urban and Mr Olsteins on 28 June 2018 (page 479). Ms Urban believed that the Claimant's performance issues derived from the Claimant's poor attitude to work and demonstrated a lack of ownership and responsibilities. Particularly the Claimant would leave at the end of his shift without a proper handover and not keeping a radio about his person on shift.
36. Mr Beagley's discussions with Mr Olsteins, he explored whether the Claimant's behaviour was rightly characterised as performance issues or whether it could be more accurately described as a conduct issue. Mr Beagley considered the Claimant's behaviour during the skype conversation on 21 June 2018, particularly whether it was antagonistic and unprofessional and whether the Claimant's attitude to work was more properly a conduct issue.
37. On 9 July 2018, Ms Redout issued a letter to the Claimant on behalf of Mr Beagley inviting him to a Grievance Outcome meeting (page 493). In advance of that meeting, Mr Beagley had prepared a report setting out a time line of events summarising the Claimant's allegations and the evidence which Mr Beagley had obtained in relation to each of the allegations. The report explained his conclusions and recommendations (page 501).
38. In summary, the report concluded Mr Beagley found nothing to suggest that anyone had bullied the Claimant, accepted that mistakes were made in relation to the Management of his unauthorised absences on 21 and 22 March 2018 and also the early stages of his Performance Improvement process. Although he considered that the Claimant's objectives under the Performance Improvement Plan were perfectly reasonable, he did accept that there had been failings around the communication of the Claimant's under performance and therefore recommended that the informal stage of the Performance Improvement Plan be extended for a further two weeks.
39. On 11 July 2018, Mr Beagley held the Grievance Outcome meeting with the Claimant and Ms Redout from HR. The Claimant did have a companion, Mr Raymond Smith who attended. At the Grievance Outcome meeting Mr Beagley went through each allegation contained in the Claimant's Grievance and then explained evidence he had collected and his conclusions.

40. On 12 July 2018, the Claimant was issued with a letter confirming the outcome of the Grievance (page 507). That letter essentially reiterated what had been explained to the Claimant verbally at the Grievance meeting on 11 July 2018.
41. Mr Beagley was not aware of Ms Jolanta Kostygoviene, nor was he aware at any point that the Claimant was in some way assisting her and it certainly was not mentioned at any point during Mr Beagley's investigation into the Grievance or at the Grievance Outcome meeting.
42. Around 19 July 2018, Miss Plimley approached Mr De Vita to request that he conduct an Informal Stage 2 PIP meeting with the Claimant on 19 July 2018. It is accepted that Mr De Vita was aware that the Claimant had been assisting Ms Kostygoviene as a companion in her meetings with the Respondents. Mr De Vita assumed that the Claimant was assisting her from a language point of view as the Claimant's English is significantly better.
43. The Stage 2 PIP meeting had come about as a result of the informal discussion at Stage 1 not resolving the Claimant's performance issues. Mr De Vita was informed by Miss Plimley that the Stage 2 of the Claimant's PIP had been extended by a further two weeks as part of the outcome of the Grievance the Claimant had previously raised. The reason why Mr De Vita was asked to conduct a Stage 2 PIP meeting on 19 July 2018 was because Mr Olsteins was away on leave on that date.
44. It is clear that prior to the Stage 2 PIP meeting, Mr De Vita discussed with Miss Plimley preparations for the meeting, particularly as Miss Plimley had been involved in the Claimant's PIP previously. She was aware that the Claimant was dissatisfied with the outcome of his Grievance, Miss Plimley informed him and to be prewarned that the Claimant may attempt to discuss the Grievance Outcome at the Stage 2 PIP meeting rather than the PIP progress itself. Mr De Vita was not sure whether he was aware prior to the meeting whether the Claimant had lodged an Appeal against the Grievance Outcome.
45. At the outset of the meeting Miss Plimley ran through the Claimant's Agreed Objectives under the Stage 2 (page 382). Mr De Vita prior to the meeting put the Objectives into a more visual form for discussion which was colour coded green or red depending on whether the Claimant was performing to a satisfactory standard against a particular Objective (page 528). There was one Objective colour coded yellow where there was not sufficient information to make a provisional assessment as to how the Claimant was performing. However, Mr De Vita was satisfied he had sufficient information to make a provisional assessment on the majority of the Objectives based on the discussions with Mr Olsteins previously and Mr De Vita's own visibility of the Claimant's performance. This was due to the fact that Mr De Vita was on the same shift pattern as Mr Olsteins and the Claimant.

46. The meeting duly took place on 19 July 2018 and lasted 20 minutes. Prior to the meeting the Claimant had emailed a document entitled “*Meeting Notes*” (page 530), the Claimant wanted Mr De Vita to sign the document during the meeting. The Claimant was disputing the decision to continue his PIP following the outcome of his Grievance. The document indicated that the Claimant planned to leave the Stage 2 PIP meeting if Mr De Vita refused to sign the document.

47. The Claimant was informed that the purpose of the meeting was not to discuss the outcome of the Grievance which is what the Claimant wished to do and that Mr De Vita would not be signing the document despite the document noting by the Claimant,

“...we could return to our daily duties and stop wasting each other’s time”.

48. Despite Mr De Vita’s best attempts on 19 July 2018 to discuss with the Claimant his performance against the agreed Objectives and showing the Claimant the colour coded matrix which did indeed show that 7 Objectives were colour coded in red, but that was merely a starting point from which to assess the Claimant’s performance against a further 10 items in green which were also to be the subject of discussion showing the Claimant was in fact doing well against the Objectives. Notwithstanding this, the Claimant was adamant he wished to discuss only his Grievance. When it was clear this was not going to be discussed, the Claimant confirmed he did not wish to continue with the Stage 2 meeting and eventually he left after declining to shake Mr De Vita’s hand at the end of the meeting.

49. The Claimant had appealed the decision in the Grievance Outcome Letter (page 532 – 542) and the Appeal was to be conducted by Mr Richard Thompson, the Senior Operations Manager for the In-bound Department as the Claimant worked in the Out-bound Department. Before the Grievance Appeal, Mr Thompson had no previous interaction with the Claimant. Before the Grievance Appeal he was not aware of the fact that the Claimant was supporting a colleague Ms Jolanta Kostygoviene. In fact, Mr Thompson first became aware the Claimant was supporting a colleague during the course of the Claimant’s Grievance Appeal Letter. The Claimant was alleging that this was a factor which led to bullying and him being put on the PIP, supporting another employee who was disabled. What Mr Thompson did note was that the Claimant was put on the PIP during March before the Claimant started supporting Ms Kostygoviene at a meeting on 25 April 2018. Therefore, it was difficult for him to conclude that the Claimant’s supporting a colleague was connected to him being placed on a PIP.

50. The first Grievance Appeal meeting was scheduled for 9 August 2018 and due to last two hours. However, the Claimant and his companion had to leave, the meeting as it over ran and it was reconvened for 15 August

2018. Between the two meetings the Claimant had roughly five days to raise various concerns.

51. Mr Thompson approached the meeting by starting at the top of the Grievance Appeal Letter, effectively taking the Claimant through it line by line. In fact when Mr Thompson read points 'A1, 1.5' at the meeting on 9 August 2018, the Claimant indicated he did not want those to be considered as part of his Appeal.
52. Mr Thompson moved on to 'A2' part of the Grievance Appeal Letter. Subsequently, the Claimant denied Mr Thompson was instructed to skip 'A1, 1.5'. The meeting then progressed through points 'B' to 'O' of the Grievance Appeal Letter and the Claimant was clearly allowed to speak freely.
53. On the same day as the reconvened Grievance Appeal meeting, 15 August 2018, Ms Jenny Mather from HR emailed the Claimant the meeting notes for both meetings (pages 594 – 596) with a request that the Claimant hand back a signed copy of the notes by 17 August 2018. This being standard practice within the Respondent. The Claimant emailed requesting more time to review the meeting notes and that was granted.
54. On 22 August 2018, the Claimant emailed Ms Mather with his proposed changes (pages 625 – 626), "*Amendments to the Notes*". Mr Thompson, however, was comfortable with the version of the notes that they had produced and that they accurately reflected what had been discussed at the two meetings. It was clear that in a number of the amendments made by the Claimant, he was retrospectively changing or adding to what had actually been said during the meeting. It was agreed that the Claimant's edited notes would be kept on file for reference, but the notes taken by Ms Mather be used as an accurate record of what was actually said during the two meetings.
55. Following the meeting with the Claimant, Mr Thompson held interviews with Mr Olsteins and Mr Beagley (pages 628 – 631 and pages 632 – 633).
56. On 24 August 2018, Mr Thompson provided the Claimant with the Outcome of his Grievance Appeal. Mr Thompson had found no evidence to support any contention by the Claimant that he had been bullied. Mr Thompson did, however, decide that the Claimant should be returned to Stage 1 of the PIP process, thereby providing him with every opportunity to achieve the standards required of him.
57. On 24 August 2018 until 19 September 2018, the Claimant was on holiday.
58. As the Claimant's PIP, having reverted back to Stage 1 following the outcome of the Claimant's Grievance Appeal on 24 August 2018, there was no opportunity for Ms Stankiewicz to conduct a Stage 1 informal

Performance meeting with the Claimant until late September 2018 due to the Claimant's holiday.

59. On 22 September 2018, a Stage 1 informal conversation as part of the PIP process was conducted between the Claimant and his then Line Manager Ms Stankiewicz.
60. On 6 October 2018, Ms Stankiewicz provided the Claimant with training to help him achieve his Targets and Objectives.
61. On 19 October 2018, an informal Stage 2 meeting between Ms Stankiewicz with HR support from Ms Orzechowska, (the notes of that meeting are at page 671 – 677). It is not unusual for a member of the HR team to attend such meetings under Stage 2 and it was important to ensure that the details of the Claimant's PIP were recorded as fully and as accurately as possible.
62. It was explained to the Claimant at the outset of the meeting by Ms Stankiewicz she was responsible for reviewing the performance of Team Leaders and was meeting with him to review the tasks assigned to him at Stage 1 of the PIP guide. It was at this point the Claimant immediately objected to Ms Stankiewicz saying he was on Stage 1 of the PIP guide. Ms Stankiewicz pointed out the outcome of the Grievance Appeal process was that the Claimant's PIP should be reverted to Stage 1. The Claimant then suggested this was the first time he had been told he was under performing. This was as a result of the Claimant being made aware by Ms Stankiewicz informally that he needed to improve from the Stage 1 PIP meeting that the Claimant had been involved with on 22 September 2018. The Claimant had also been told, during the PIP process before his Grievance, that he had been underperforming.
63. Ms Stankiewicz tried to continue with the meeting and to go through each of the expectations that she had previously discussed with the Claimant and which she had now set in a PIP document. This was to provide the Claimant with additional clarity over the exact steps he could take to improve his performance. Unfortunately, the Claimant continued to interrupt Ms Stankiewicz, arguing that she had changed the expectations previously discussed and the Claimant's insistence that he was not underperforming. Ms Orzechowska intervened and explained what the exact expectations were and that the examples that Ms Stankiewicz had of the Claimant's underperformance would be clearer if the Claimant allowed Ms Stankiewicz to finish what she was saying and reviewing the PIP document. However, the Claimant continued interrupting the meeting and Ms Orzechowska explained to the Claimant, not surprisingly that if he continued interrupting it would be dealt with separately as a conduct issue. The Claimant's response was,

“...would have a wonderful time off preparing the escalation”.

64. Ms Orzechowska understood the Claimant to be suggesting he would take time off to complain in writing and she made it clear that it would be recorded in the notes of the meeting what he had said. At that point the Claimant became angry, stood up, threw the chair forward and claimed that he did not say that he would take time off work to escalate the issue, instead,

“...wonderful time off preparing the escalation”.

65. Ms Orzechowska accepted that she may have misunderstood the Claimant and tried to calm the situation down. The Claimant said he was not going to speak about the matter further and wanted to take the matter to a Senior Manager Mr Preston-Jones. The Claimant then refused to sit down and left the meeting.
66. On 26 October 2018, Mr Preston-Jones received an email from the Claimant where he raised general issues with his PIP, together with a serious complaint that he had been bullied by Ms Orzechowska.
67. Mr Preston-Jones having spoken with Ms Orzechowska was satisfied from her explanation of the meeting with the Claimant, that she had not behaved in an unprofessional or bullying manner which would lead to her being taken away from managing the PIP process. In fact, Ms Orzechowska told Mr Preston-Jones that the Claimant had been loud and aggressive in the meeting and the misunderstanding over what had been said.
68. Mr Preston-Jones thereafter replied to the Claimant's email on 26 October 2018 (page 682) stating he was comfortable that the team had followed the PIP process in respect of the Claimant and further with Ms Orzechowska continuing to support the process. Mr Preston-Jones was aware of the fact the Claimant was supporting Mrs Jolanta Kostygoviene during her meetings with HR in 2018, as the Claimant had done with other Amazon employees.
69. On 7 November 2018, the Claimant presents his claim to the Employment Tribunal.
70. Before Ms Stankiewicz conducted the next Informal Review meeting with the Claimant under Stage 2, she received a number of complaints from colleagues about the Claimant's performance and conduct. In particular, on 8 November 2018, Ms Urban had emailed Ms Stankiewicz to advise that the Claimant had been unprofessional and behaved in a challenging way towards her in a meeting earlier on 8 November 2018 (pages 691 – 692). Ms Urban asked for the incident to be reviewed in the Claimant's next informal review meeting as a result of his attitude and actions towards her. The Claimant's particular behaviour towards Ms Urban was that on 9 November 2018 Ms Urban again emailed Ms Stankiewicz to tell her the Claimant had demonstrated a lack of ownership and failed to provide expected levels of support during the afternoon of 8 November 2018, in

particular that the Claimant had failed to direct members of his team who had no work to assist a nearby team which was under pressure to meet their shipment deadline. When Ms Urban radioed the Claimant to ask him about this, he responded by saying he was not looking after the other Team.

71. Then on 9 November 2018, Ms Stankiewicz received an email from Ms Mierzejewski about the Claimant's conduct on 31 October 2018 during a training meeting. The meeting was about 'bring up, uncover, recognise a partner', formally known as BURP. When the question was raised as to what BURP stood for, apparently the Claimant responded by burping in front of everyone.
72. The scheduled Review meeting on 10 November 2018 between the Claimant and Ms Stankiewicz was the second Informal Review meeting. Once again, Ms Stankiewicz went through each of the goals, aims and actions in the document that had been provided to the Claimant and pointing out some of the Claimant's shortcomings. Feedback was also given about his conduct at the training meeting and in particular matters raised by Ms Mierzejewski and Ms Urban, the fact that the Claimant had not met the goal of managing himself, including displaying management behaviours and leadership principals at all times and supporting managers and the fact that the Claimant had failed to take any action to increase engagement and motivation in his team. All of these actions were included in the PIP document.
73. It is clear, in the above Informal Review meeting the Claimant once again pushed back on Ms Stankiewicz feedback and seems unwilling to accept or acknowledge his shortcomings. Ms Stankiewicz's conclusion, notwithstanding the Claimant's explanations for his various behaviour and conduct, still found four out of 12 areas where the Claimant was underperforming. Not surprisingly the Claimant disagreed. At the end of the meeting Ms Stankiewicz informed the Claimant that if his performance did not improve he would be given a first Formal Warning under Stage 3 of the PIP guide. Following the meeting Ms Stankiewicz emailed the Claimant a copy of the document which had been discussed containing the outcomes of the two Informal Review meetings held to date (pages 695, 696 and 697).
74. On 23 November 2018, Ms Stankiewicz invited the Claimant to attend the First Formal Performance meeting under Stage 3 of the PIP guide to take place on 24 November 2018. Ms Urban attended the Stage 3 meeting in order to take a note of what was discussed. Ms Orzechowska also attended the meeting to provide HR support. The meeting lasted for two hours. Once again, Ms Stankiewicz outlined the Claimant's underperformance as had been recorded in the document. Once again the Claimant continued to push back against any feedback and argued throughout the meeting. At the end of the Stage 3 First Formal Performance Review meeting, Ms Stankiewicz told the Claimant she was

going to issue him with a First Formal Warning under the PIP guide as a result of his continued underperformance.

75. The Claimant was sent a detailed letter confirming the outcome and setting out the reasons for the First Formal Warning, dated 27 November 2018 (pages 746 – 748). The letter also set out targets that the Claimant was expected to meet in order to satisfactorily complete the Performance Improvement Plan process.
76. On 28 November 2018, the Claimant sent to Ms Stankiewicz a resignation letter. The letter read,

“Hi, please find my letter of constructive dismissal attached. Let me know when I can collect my E45 form, please send all the correspondence to my private email...”

*Kind regard
Benjaminas Ramanuskas”*

77. The Claimant’s formal letter of resignation attached sets out a history and time line of events and concludes with,

“...I would like to apply last straw doctrine as the company’s actions (yours inclusive) has subjected me to abusive treatment, not only undermining me for no reason (even though I am one of the most experienced Team Leads) and pushed me through enormous amounts of stress but also acted in breach of contract and mutual trust on numerous occasions in the past. Although I waived company breaches in the past and stayed in my TL position in faith that the company has learned a lesson and knows when to stop. It is obvious that the company has no intentions to stop but on the contrary uses every effort to push me out of the business. In the face of the information and facts I am no longer willing to waive this kind of treatment again. I appreciate the time and energy which the company invested in training me and I believe the skills that I have gained will serve me well in the future. I will do my best to ensure a smooth transition upon my departure and make sure that all details and information is left available to the person who takes up my position following my departure. I am sure you and other shifts have plenty of talented young people who already have knowledge and experience and are willing to step up...”

The Law

VICTIMISATION

78. The Equality Act 2010 states at Section 27:

Victimisation

- (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 that B has done, or may do, a protected act.
- (2) Each of the following is a protected act –
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

79. The Equality Act 2010 states at Section 136:

Burden of Proof

- (1) ...
- (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.

80. One of the essential elements of the prima facie case that the Claimant must make out is that the employer actually knew about the protected act upon which he bases his. In Scott v London Borough of Hillingdon [2001] EWCA Civ 2005 CA, the Court of Appeal found that knowledge of a protected act is a pre-condition of a finding of victimisation and that as there was no positive evidence that the Respondent knew of the Claimant's previous complaint, there had been no proper basis for the Tribunal to infer that the Claimant had been victimised.
81. A composite approach to knowledge does not imply in discrimination cases, one person's knowledge should not be imputed to another. See CLFIS (UK) Limited v Reynolds [2005] EWCA Civ 439.

CONSTRUCTIVE DISMISSAL

82. The Employment Rights Act 1996 states in Section 95:

Circumstances in which an employee is dismissed.

- (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2)..., only if) -
- (a) ...
 - (b) ...
 - (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.

83. The law relating to constructive dismissal was set out by Lord Denning MR in the well known case of Western Excavating (ECC) Limited v Sharp [1978] ICR 221, as follows:

"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 then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."

84. Case Law has advanced the argument that the Tribunal is required to ask itself the question of whether conduct was so unreasonable that it really went beyond the limits of the contract.

85. A Tribunal will be looking at whether,

“Without reasonable and proper cause conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee”.

Lord Steyn in Malik v BCCI [1998] AC20

86. Finally, more recently in Kaur v Leeds Teaching Hospital NHS Trust [2018] EWCA Civ 978, Lord Justice Underhill explained the process a Tribunal should adopt when assessing a last straw resignation:

Paragraph 55 –

“I am concerned that the foregoing paragraphs may make the law in this area seem complicated and full of traps to the unwary. I do not believe that that is so. In the normal case where the employee claims to have been constructively dismissed it is sufficient for a Tribunal to ask itself the following questions:

- (1) What was the most recent act (or omission) on the part of the employer which the employee says caused or triggered his or her resignation?*
- (2) Has he or she affirmed the contract since that act?*
- (3) If not, was that act (or omission) by itself a repudiatory breach of contract?*
- (4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation for the reason given at the end of paragraph 45 above).*
- (5) Did the employee resign in response (or partly in response) to that breach?*

OUT OF TIME

87. As has been said earlier in this Judgment, we know the claim was presented on 7 November 2018 and the dates of Acas Early Conciliation on 1 October 2018, the certificate being granted on 22 October 2018, therefore any complaint prior to 2 July 2018 is potentially out of time. Therefore the Tribunal may not have jurisdiction to deal with it unless it exercises its discretion.

88. Whilst Employment Tribunals have a wide discretion to allow an extension of time under the just and equitable test, Section 123, it does not necessarily follow that the exercise of the discretion is a foregone conclusion. Indeed, the Court of Appeal made it clear in Robertson v Bexley Community Centre (t/a Leisure Link) [2003] IRLR 434 CA, that when Employment Tribunals consider exercising the discretion under Section 123(1)(b) of the Equality Act 2010,

“There is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, the Tribunal cannot hear a complaint unless the Applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.”

89. The onus is therefore on the Claimant to convince the Tribunal that it is just and equitable to extend time.
90. It is noted that Section 123 of the Equality Act 2010, does not specify any list of factors to which a Tribunal is instructed to have regard in exercising the discretion whether to extend time for just and equitable reasons.
91. Previously the Employment Appeal Tribunal suggested that in determining whether to exercise that discretion to allow late submission of a discrimination claim, Tribunals would be assisted by considering the facts at Section 33(3) of the Limitation Act 1980 and Coal Corporation v Keeble and Ors [1997] IRLR 336 EAT. That section deals with the exercise of discretion in Civil Courts in personal injury cases and requires the Court to consider the prejudice to which each party would suffer as a result of the decision reached and to have regard to all the circumstances of the case, in particular the length of, and reasons for, the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the parties sued has co-operated with any request for information, promptness with which the Claimant acted once he or she knew of the facts given rise to the cause of action and steps taken by the Claimant to obtain appropriate advice.
92. Subsequently, the Court of Appeal has said in Southwark London Borough Council v Afolabi [2003] ICR 800, that whilst the check list in Section 33 of the Limitation Act 1980 provides a useful guide for Tribunals, it need not be adhered to slavishly.

The Tribunals Conclusions

ALLEGATION 1

93. The Claimant was invited to a Formal Disciplinary / Performance Improvement Plan (Stage 3) meeting which was scheduled for 15 June 2018.

94. The Tribunal has no difficulty in concluding that the act clearly did occur, the Claimant was invited to attend the meeting on 15 June 2018. The next question is, is it a detriment being invited to a PIP meeting and thus likely to be perceived as a disadvantage to an employee? If it is, was it because of a protected act?
95. The Tribunal have no difficulty in concluding that there is no evidence to support any inference that Mr Olsteins was aware of the protected acts at the relevant time and furthermore, that the alleged protected acts played any role in Mr Olsteins decision to call the PIP meeting. The Claimant was underperforming and in accordance with the Respondent's policies, the Claimant if he did not improve was progressing over the staged process of the PIP policy. It is also noted by the Tribunal that Mr Olsteins was not challenged on the point of his knowledge that the Claimant was assisting another employee. That claim therefore fails.
96. However, even if he were wrong on that point, the claim is out of time. It is a single act, it does not form part of a series of continuing acts and the Claimant it has to be said in the course of these proceedings, has not advanced any reason why the Tribunal should exercise its discretion. The Tribunal would, in any event, have no jurisdiction as the claim is out of time.

ALLEGATION 2

97. During the first Grievance meeting on 20 June 2018, the Claimant was not allowed to have a work colleague as a companion.
98. Under the Respondent's policies (page 419), the Claimant was not permitted to have a work colleague attend with him at a Grievance meeting. Furthermore, it is true, the Claimant did not request a companion to attend with him and the Claimant was fully aware that the process was the First Informal Stage (page 461).
99. Mr Beagley indeed confirmed in his evidence before this Tribunal, notwithstanding the Respondent's policies, had the Claimant requested a companion attend with him, he would have granted it.
100. There is therefore no detrimental treatment the Claimant has been subjected to. Even if it was, was it because of the protected act? Clearly it was not because there was unchallenged evidence of Mr Beagley that he was unaware of the Claimant's involvement in supporting Mrs Jolanta Kostygoviene, therefore this claim fails.
101. Furthermore, the claim is out of time and for the reasons the Tribunal have proffered above in relation to Allegation 1, the Tribunal would not exercise its discretion to extend time.

ALLEGATION 3

102. The Grievance Investigation meeting notes which the Claimant received to sign on 21 June 2018 (already signed by the Investigating Operations Manager) were said to be misleading and false.
103. The first point to make here is the Respondent's deny any notes of the meeting were in any way misleading or false. Indeed, there was no challenge by the Claimant to the accuracy of the minutes when the Claimant cross examined Mr Beagley, the notes of that meeting (page 437) represent an accurate summary of what transpired at the meeting. There is no reason why the note taker from HR Ms Redout would have concocted the notes. Indeed, Mr Beagley commented that the notes amended by the Claimant were largely typos and any of the narrative provided by the Claimant would not have altered what was discussed at the meeting.
104. Clearly false or misleading notes would be a detriment. If they were, was it because of a protected act? Again, there is even less evidence that any potential inaccuracy in the notes was influenced by any of the Claimant's protected acts. Therefore this claim must necessarily fail.
105. The Tribunal also notes that again the allegation is out of time and the Tribunal repeats its reasoning why they have not exercised the just and equitable discretion from the point outlined under Allegation 1 above.

ALLEGATION 4

106. The suggestion that Mr Olsteins, the Claimant's Line Manager named in the Claimant's Grievance, still invited the Claimant to a First Formal PIP meeting, claiming the Claimant was failing to manage the department's performance. The Claimant says this was further putting pressure on him.
107. Mr Olsteins did invite the Claimant to the PIP meeting (page 420) and the Claimant as a Team Lead has responsibility for the performance of his Team. If so, was it a detriment? The answer to that is no.
108. Could it be said that Mr Olsteins' actions were because of the protected acts? Once again, the Tribunal noted the Claimant's failure to challenge Mr Olsteins knowledge of any of the protected acts before August 2018, or indeed the influence any of those protected acts has had on Mr Olsteins decision to put the Claimant on a PIP. Indeed, the Claimant had already been put on a performance management in March, long before the Claimant was helping Mrs Jolanta Kostygoviene. Therefore from a causation point of view, the allegation simply does not make sense. That claim fails.

109. Once again the claim is out of time. The Tribunal have not exercised their discretion to extend time, once again repeating our reasoning set out in Allegation 1.

ALLEGATION 5

110. The Grievance outcome of 11 July 2018.
111. Clearly it is accepted the Claimant raised a Grievance and there was an outcome of that Grievance from Mr Beagley (page 507). Was it a detriment? The Claimant was unhappy with the findings of that Grievance as he appealed the Grievance outcome. What the Claimant patently failed to do was to challenge Mr Beagley as to how his report was in some way lacking or the fact that no right minded reasonable person could have come to the conclusion Mr Beagley did after he carried out his investigation following meetings with Ms Urban and Mr Olsteins and indeed the Claimant.
112. Once again, the Claimant did not suggest Mr Beagley was in some way influenced by the Claimant's actions in assisting Mrs Jolanta Kostygoviene, therefore the claim fails.
113. The Tribunal notes that this claim is of course in time.

ALLEGATION 6

114. Mr Roberto De Vita, appointed to conduct a PIP Stage 2 Review meeting whilst knowing that the Claimant was preparing the Grievance and without consulting with the previous Manager about the Claimant's standings or reviewing the PIP Stage 2 documents, meeting notes etc., not having sufficient information on the subject and straight away alleging that the Claimant was failing 7 out of 18 points.
115. Once again, the first question is did the act complained of occur? Mr De Vita accepted he produced a colour coded matrix and that was used as a starting point in discussions with the Claimant. Following that, the meeting did not progress as the Respondent had anticipated because of the Claimant's insistence throughout that he wanted only to discuss his Grievance. Clearly the discussion document is not a detriment to the Claimant. If it was, was it because of the protected act? Once again the Claimant failed to cross examine Mr De Vita about the alleged protected acts in April 2018 when he says he had a conversation with Mr De Vita and Ms Urban about the Equality Act 2010 and protection for Mrs Kostygoviene. Mr De Vita was quite clear, he had absolutely no recollection of this discussion. Furthermore, the Claimant failed to ask Mr De Vita about any aspect of his knowledge of the protected acts. The claim therefore fails.

ALLEGATION 7

116. The Respondent's Appeal meeting notes of 15 August 2018 were heavily tailored to suit the Respondent and are misleading.
117. Mr Thompson carried out the Appeal meeting and it is accepted that the Claimant received minutes of the meeting of 15 August 2018 with Mr Thompson. Again, there was no challenge to the notes of that meeting and it is correct it was left to the Employment Tribunal to question Mr Thompson as to his views on the accuracy of those notes. His response and evidence was quite clear, the notes were accurate and the Claimant's version of events was not the reality of what took place.
118. The Tribunal noted again that Mr Thompson was not challenged as to any knowledge / impact or lack of impact of his knowledge of the Claimant's alleged support of Mrs Jolanta Kostygoviene. This claim therefore fails.

ALLEGATION 8

119. The outcome of the Appeal on 24 August 2018 was unjust.
120. Clearly the Claimant received an outcome to the Appeal against his Grievance. Yet again there was absolutely no cross examination by the Claimant as to why the outcome was unjust, or why it was unreasonable following the investigations carried out. Indeed what Mr Thompson did was to reset the PIP by starting the PIP at the Stage 1 process, the informal stage. That clearly is not an unjust outcome given the Claimant's underperformance. Clearly there was no detriment given the outcome by Mr Thompson. The Tribunal again repeating the lack of challenge by the Claimant as to the impact or lack of impact and knowledge of Mr Thompson assisting another employee. This claim therefore fails.

ALLEGATION 9

121. The Claimant was bullied by the HR note taker Ms Marzena Orzechowska during the PIP Stage 2 meeting on 19 October 2018.
122. This the Claimant said relates to a comment the Claimant made in the meeting about having a "...wonderful time off preparing the escalation". The Respondent fully accept the Claimant was in a meeting with Ms Orzechowska on 19 October 2018 in which she misheard the Claimant and who she believed had said he would have a "...wonderful time off preparing the escalation".
123. The Claimant patently failed to address this issue at all with the witness and it was left to one of the Tribunal Members to ask the witness any question about this. It was clearly a misunderstanding in that Ms Orzechowska misheard what the Claimant said, perhaps not surprisingly

given the Claimant's previous attitude at previous meetings. The Tribunal repeats, it was simply a misunderstanding. Was it because of the protected act? The Claimant did not challenge Ms Orzechowska as to her motive in the misunderstanding or because it was the Claimant's assistance of another employee. The claim must therefore fail.

ALLEGATION 10

124. On 26 October 2018, Mr Chris Preston-Jones expressed that he is "*comfortable*" for the person who had bullied the Claimant "*to continue to support the process*".
125. It is accepted that Mr Preston-Jones did say he was comfortable for Ms Orzechowska to continue as an HR representative to support Ms Stankiewicz in the PIP process with the Claimant. That act clearly took place and Mr Preston-Jones accepts that. Mr Preston-Jones' evidence was clear in that he was comfortable with Ms Orzechowska to support the PIP process, the fact that the Respondents do not have a large HR team and he felt that she was the right person to carry on the process. Mr Preston-Jones had talked it through with Ms Stankiewicz who gave a very similar account of what happened at the meeting with the Claimant previously. The decision was not with the motive of bullying the Claimant. His reasoning is clear.
126. Was it because of the Claimant's support for Mrs Jolanta Kostygoviene? Mr Preston-Jones was aware of the Claimant's support for her, however, he was very clear that the knowledge of that fact had no influence whatsoever in his decision making. This claim is not well founded.

ALLEGATION 11

127. On 10 November 2018, failing the Claimant on PIP Stage 2 for no substantial reason (having negative effect on the company's production and income) and inviting the Claimant to a PIP Stage 3 meeting.
128. It is accepted the act complained of did occur. The reason for the Respondent's action was the Claimant's continued failure in the performance process and that cannot therefore amount to a detriment in the circumstances, or on the facts that the Tribunal have been made aware of and which the Tribunal accepts. During the Stage 2 PIP the Claimant had had ample time in which to improve. It commenced on 20 April 2018 and continued until 15 June 2018. It clearly did not come about as a result of the Claimant's support for Mrs Jolanta Kostygoviene. This claim is not well founded.

ALLEGATION 12

129. On 24 November 2018, bullying of the Claimant in the PIP Stage 3.
130. This appears to be advanced on the basis that the Claimant has a different view as to how he was performing. Clearly, on the evidence before the Tribunal, the Claimant was continuing to underperform and his conduct at meetings and training events left a lot to be desired. Therefore the PIP Stage 3 was not bullying, it was justified and it was reasonable. It cannot therefore be a detriment. It had absolutely nothing to do with the Claimant's support of Mrs Jolanta Kostygoviene and therefore this claim is not well founded.

ALLEGATION 13

131. On 27 November 2018, the Claimant believing the outcome of the PIP Stage 3 meeting was unreasonable.
132. It is clear a meeting took place. It is clear, that meeting when objectively assessed and one looks at the minutes, was a fair and reasonable meeting at which the Claimant had every opportunity to respond. The fact of the Claimant's underperformance was there, as was his conduct, supported by other employees. The Claimant disagreed. It was not a detriment and the outcome again had nothing to do with the Claimant's support of Mrs Jolanta Kostygoviene.
133. When one looks at the entire combination of facts in relation to the Claimant's alleged claim that he was victimised for supporting a colleague who had a disability, it simply does not stand the test when looking at the Respondent's explanation for each and every action they took against the Claimant.
134. The Tribunal notes that the period of time over which the PIP process was taken was a lengthy period. There were lengthy meetings at which the Claimant was given every opportunity to put forward his view and engage in the process. It was clear that the Claimant was intent on antagonising each and every Manager he had dealings with and had an agenda throughout the process to have the Performance Improvement Plan removed entirely as if it had never been started. There is simply no evidence there to support any claim, the actions of the Respondent amounted to victimisation for supporting another employee who was disabled, Section 27 of the Equality Act 2010.

CONSTRUCTIVE DISMISSAL

135. The acts said to amount to a repudiatory breach of contract are the acts of victimisation. The Tribunal repeats its reasoning in relation to the above alleged acts of victimisation.

136. There clearly was no fundamental breach by the Respondent of the implied term of trust and confidence, or indeed any of what has been alleged, by the Claimant to support the suggestion the Respondents in some way were in breach of the implied term of trust and confidence. The Respondents did not act in a way which was calculated without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
137. The evidence is clear that the actions of the Respondents were fully justified, in circumstances where an employee simply would not accept the facts that he was underperforming leading his Team and there were conduct issues in relation to his behaviour and manner at training events and meetings.
138. Further, it is true the largely unchallenged evidence of a number of witnesses on behalf of the Respondent support the fact the Respondent had reasonable and proper cause for its actions based on the uncontroversial evidence that numerous Managers had issues with the Claimant's performance going back well before the protected acts relied upon by the Claimant and the evidence of the Respondents to the Claimant's perceived failures to perform.
139. The Claimant's claim that he was constructively unfairly dismissed is not well founded.

Employment Judge Postle

Date: 21/07/2021

Sent to the parties on: 27/7/2021

N Gotecha

For the Tribunal Office