



EMPLOYMENT TRIBUNALS

Claimant: Mr L Ejehu
Respondent: Reach Contact Limited

Heard at: Bury St Edmunds (CVP) **On:** 19-21 July 2021
Before: Employment Judge S Moore
Mr A Hayes
Ms S Laurence-Doig

Appearances

For the Claimant: In person
For the Respondent: Ms S Clarke, Counsel

This has been a remote hearing on the papers to which the parties/consented did not object. The form of remote hearing was CVP. A face-to-face hearing was not held because it was not practicable and all matters could be determined in a remote hearing.

JUDGMENT

- (1) The claims for disability discrimination (under sections 15, 20 and 26 of the Equality Act 2010) are dismissed.
- (2) The claim for race discrimination (under section 13 of the Equality Act) is dismissed.

REASONS

Introduction

1. This was claim of disability discrimination and race discrimination as set out in issues (a)-(f) below. Issues (a)-(e) had been agreed at a Preliminary Hearing on 18 May 2020 and were replicated in the Claimant's witness statement. Issue (f) was a new issue introduced in the Claimant's witness statement, but Ms Clarke did not object to the Claimant pursuing it at the hearing.
 - (a) The Claimant alleged that by virtue of his disability he was not able to collect stock from the cash and carry to take to the stores where he worked. As a result of this, his manager, Mr Haydn Walters, subjected him to a detriment by carrying out more checks on his work than he did to his colleagues in the period up to 31 May 2019 (discrimination arising from disability contrary to s. 15 Equality Act 2010 (EqA));
 - (b) The Claimant alleged that the Respondent had a provision, criterion or practice that somebody must drive a manual car to participate in the "Paint London Green" event. As a result of his disability his driving licence confined him to driving automatic cars. The reasonable adjustment required was to allocate him an automatic car for this event (failure to make reasonable adjustments contrary to s. 20 EqA);
 - (c) The Claimant alleged that Haydn Walters said to him "you should get a disabled badge if you can't drive a manual" (disability related harassment contrary to s. 26 EqA);
 - (d) The Claimant alleged that because of his race Haydn Walters refused to grant him annual leave to attend a hospital appointment on 25 June 2019 (direct race discrimination contrary to s. 13 EqA). In support of this claim the Claimant relied on an allegation that Haydn Walters had also refused time off to another employee, ID;
 - (e) The Claimant alleged that Sarah Morris set a date for a meeting with him on 25 June 2019, knowing that he was unavailable due to a medical appointment (disability related harassment contrary to s. 26 EqA);
 - (f) The Claimant alleged that Sarah Morris used a Car Hire company to cause stress and bullying while he was still recovering from a hospital appointment and/or unwell (disability related harassment contrary to s. 26 EqA).
2. We heard evidence from the Claimant, and for the Respondent from Mr Haydn Walters (HW), Heineken Manager, and Ms Sarah Morris (SM), Account Manager. We were also referred to a bundle of documents comprising approximately 490 pages. The Respondent also sought to rely on a supplementary bundle, but since these documents had been provided to the Claimant only one working day before the start of the hearing, we refused the Respondent permission to rely on them, save where they constituted email

correspondence between the Claimant and the Respondent (with which the Claimant was already familiar).

3. On the basis of the evidence, we make the following findings of fact.

Facts

4. The Respondent is an expert outsourced international contract sales organisation that specialises in fast moving consumer goods and technical sales for a variety of clients in different market segments. The Claimant was previously employed by McCurrach UK Limited from 3 May 2019 until February 2019 when his employment transferred to the Respondent. His job title was Field Sales Executive, and he was responsible for selling a range of products to convenience stores to increase distribution, rate of sales, visibility and quality of display, in East London and surrounding areas. He was required to visit a number of pre-determined stores per day, to negotiate and maintain increased space/displays for products (particularly Heineken products) and promote the client brand. He further had to record all the data he collected on a tablet provided by the Respondent, which included taking photographs of displays of products in different stores.
5. Following the Claimant's transfer, he told HW, his line manger that he suffers from a heart condition called myocarditis. The Respondent contacted the Claimant's previous employer to understand what adjustments had been made to support the Claimant and was told that, other than providing support and revised targets during his phased return to work following a period of absence due to his heart condition, no adjustments had been made. Subsequently HW was asked by SM to complete his own risk assessment and submit it to the HR Department, which he did on 13 March 2019. The measures identified were that the Claimant (i) was to drive an automatic car, (ii) not to lift heavy objects and (iii) not to complete tasks where his heart rate would increase dramatically.
6. On 3 April 2019 HW conducted a routine audit of the Claimant's work. It is the Respondent's standard practice for managers to carry out audits on their team every 6 weeks to ensure that the data is being recorded accurately. To complete the audit a manager prints off the questions that the field sales executive complete when they visit a store and compares them with what the manager can see in store himself. These regular audits are part of the commercial agreement between the Respondent and its clients.
7. HW discovered anomalies in the data provided by the Claimant and subsequently discussed these anomalies with him. Although there was some dispute between HW and the Claimant as to precisely what HW told the Claimant, and the extent of the problems identified, the Claimant accepted that HW told him that he (the Claimant) had marked a number of products as being in the store when they were not, and had incorrectly recorded the share of space the products had within the store (albeit the Claimant considered this was two aspects of the same point). The Claimant stated that the missing products must have been sold during the period between his visit and that of HW. HW considered that it would have been very unusual for all the products in question

(6 types) to have been sold in the intervening period. Further training was given to the Claimant on the next development day of 4 April 2019.

8. HW did not conduct an audit on any other field sales executives in April. He said, and we accept, that this was because of taking annual leave during April, because of the Easter break, and because of the fact that he was integrating a new recruit in Wales. He said he had prioritised auditing the Claimant because he had previously been informed by McCurrach that one of the retailers had made a complaint about the Claimant's work.
9. On 8 May 2019 HW conducted a second audit on the Claimant. Again, HW discovered significant discrepancies between the data the Claimant had recorded and what HW found himself in the stores. When HW raised these concerns with the Claimant on the next development day, which was 10 May 2019, the Claimant said the products must have been changed during the night between the Claimant's visit and HW's visit the subsequent day. HW therefore proposed that the next time he would conduct a "live audit", namely visit the retailers on the same day that the Claimant had visited them.
10. In cross-examination the Claimant denied this second audit ever took place. In the light of the Claimant's case that he was discriminated against by being subject to more audits than his colleagues in the period up to 31 May 2019, this denial seemed a little bizarre. In any event we are entirely satisfied that this second audit took place on 8 May 2019. We are also satisfied that during May and June HW conducted an audit on all the other members of his team. An investigation into a subsequent grievance by the Claimant contains links to the files of all nine audits in question (including that of the Claimant on 8 May 2019) and we do not accept the Claimant's assertion that this evidence had been forged. Further we were also referred to two transcripts and an audio recording of an investigatory meeting that took place on 12 June between the Claimant and SM, one transcript had been prepared by the Claimant, the other by the Respondent. In the Respondent's transcript the Claimant expressly refers to the "8 May field audit". Since the Claimant's transcript contained no such reference, we listened to the relevant part of the audio recording and found the Respondent's version to be correct and that the Claimant's transcript had omitted the words "8 May field audit".
11. On 30 May 2019, Heineken ran an event called "Paint London Green", which consisted of selling cases of Heineken to various stores. The Respondent was asked to support the event by providing drivers for Heineken's vans and asked their employees if they wished to volunteer. The Claimant volunteered to be a driver. Although Heineken were responsible for hiring the vans in question there was a degree of liaison with the Respondent who provided the names and addresses of their employees who had volunteered to be drivers. Although the employees were supposed to print off the relevant forms themselves and provide copies of their driving licenses, some employees, including the Claimant, had difficulties with this and HW printed off the documentation for them (including the Claimant). On the day before the event, Heineken delivered a van to the Claimant's home but it was not an automatic which meant the Claimant couldn't drive it. The Claimant spoke with HW who then spoke with his

line manager SM. They decided that another volunteer driver would have to be found and that the Claimant should undertake his store visits as normal during the day and attend the Heineken event during the evening. The Claimant was unhappy with this arrangement. After further conversations, including between the Claimant and David Walker of Heineken (whom the Claimant already knew from his employment with McCurrach UK) it was agreed that the Respondent would provide an additional volunteer to drive the Claimant's van and that the Claimant would attend the event by being a passenger in that van. To support this arrangement David Walker agreed to reduce the target number of store visits required of the Respondent's field executives that day.

12. Before the additional volunteer driver arrived, the Claimant went with HW to load the stock in the van. The Claimant alleges that HW said to him with a smirk, "you should get a disabled badge since you can't drive a manual". HW categorically denied making such a comment, or saying anything similar, and we are not satisfied that any such comment was ever made. In a written complaint made four days later on 3 June 2019 (see below at paragraph 14), the Claimant made detailed allegations about HW, including in respect of the Paint London Green event, and did not mention any such comment. In any event, for reasons given above and below we do not consider the Claimant to be a credible witness (see, in particular, paragraphs 10 and 49).
13. On 31 May 2019 HW conducted a "live audit" on the Claimant, visiting two stores, namely "Aire Wines" and "Nisa", three hours after the Claimant had supposedly visited them. The Claimant's records indicated that he had visited the Aire Wines store between 8.30 and 9.23am, and the Nisa store between 09.32 and 10.43 am, and that he had uploaded a photograph of each visit. However, HW found numerous discrepancies between both the products and the promotional information in the photos taken by the Claimant and those in his own photographs and, on further investigation, discovered that the meta data from the Claimant's photos stated they had been taken on 24 May 2019. Furthermore, when the Claimant had synced the information on his tablet regarding each of the visits with the Respondent's systems (at, respectively, 9.23am and 10.44 am) the Claimant's location was recorded as being 12 miles away from the Aire Wines store and 10 miles from the Nisa Store. In addition, the store managers informed HW that the Claimant had not been to the stores that morning, and one of the managers had also checked CCTV footage to confirm the Claimant had not been in the store.
14. On 3 June 2019 HW called the Claimant and explained his concerns. He told the Claimant he was undertaking an investigation. Later that day he sent emails to the Claimant attaching the findings from his investigation and the notes of his phone call with the Claimant. That evening, the Claimant sent an email to HW and SM alleging that he was being discriminated against by HW due to his (the Claimant's) health.
15. On 5 June 2019, SM informed the Claimant that she was taking over the investigation and invited him to attend an investigation meeting the following day.

16. On 6 June 2019 the Claimant emailed SM and said he could not attend the meeting because he was in hospital. He subsequently submitted a Fitness for Work Note dated 6 June 2019 referring to "Stress related problems and Myocarditis" and stating he "may be fit for work with amended duties as advised by cardiologist".
17. On 7 June 2019 the Claimant received an automatic response from the Respondent's computer system stating that an earlier request to take annual leave on 25 June 2019 had been rejected'. HW accepted in evidence that at the end of May 2019 the Claimant had requested to take annual leave on 25 June 2019 to attend a hospital appointment. HW stated he had informed the Claimant that an employee would not be expected to use their annual leave entitlement for a medical appointment and advised him to make a request for authorized leave instead. Since he had not approved the Claimant's request for annual leave it had been automatically declined by the system 10 days later (on 7 June). We accept this evidence. Notably the Claimant subsequently attended his hospital appointment on 25 June 2019, without using his annual leave entitlement in order to do so.
18. In the context of his complaint about the refusal of his annual leave request, the Claimant, who is a black man, made serious and unsubstantiated allegations that another black colleague, ID, had died of a heart attack due to the negligence of HW in pressurizing him (ID) to return to work and/or refusing him time off work. There was no evidence whatsoever to support such an accusation. Indeed, HW gave unchallenged evidence that he had attended both ID's funeral and ID's memorial service at the invitation of ID's widow.
19. The Claimant returned to work on 10 June 2019.
20. On 12 June 2019, SM held an investigatory meeting with the Claimant. Subsequent to that meeting, SM went back to both stores. As regards the Nisa Store, she found the store had a signing in book and took a photograph which records the Claimant as having signed in on 24 May 2019, but not on 31 May 2019. SM was also shown, and took a photograph of promotional material indicating which products were on promotion on 24 May compared to 31 May 2019. As regards Aire Wines, since the store manager was not there when SM visited, she didn't obtain any further information. In conclusion, SM concluded that the evidence showed the Claimant had not attended either the Nisa Store or the Aire Wines store on 31 May 2019, despite the records he had submitted claiming this, and that he should attend a disciplinary hearing on 25 June 2019 to answer an allegation of gross misconduct. In evidence SM accepted she had been told that the Claimant had to attend a hospital appointment on 25 June 2019 but said that she simply forgot about this when she identified a date for the Claimant's disciplinary hearing. We accept that evidence.
21. On 24 June 2019 the Claimant submitted a formal grievance, alleging bullying/harassment and discrimination by HW and SM. In that grievance he alleged, amongst other things, that SM had deliberately fixed his disciplinary hearing for 25 June 2019 knowing full well he had a hospital appointment that day, and asked for the date of the hearing to be changed. As a result, the disciplinary hearing did not take place on 25 June 2019 and the Claimant's

assertion in his witness statement that “[SM] went ahead with the disciplinary hearing despite my absence and medical condition which was highly insensitive” is plainly wrong.

22. On 25 June 2019 the Claimant attended a hospital appointment to investigate chest pains and palpitations. It is clear from documents in the bundle that he was treated at the hospital as an outpatient.
23. Also on 25 June 2019 the Claimant was informed that his grievance would be investigated by an Operations Manager in a different part of the business and that the disciplinary process would be put on hold.
24. On 2 July 2019 the Claimant submitted a Fitness for Work Note for the period 1-31 July 2019 referring to “Chest pain-under cardiologist” and stating that he was not fit for work. Further documents in the bundle show that the Claimant was fitted with a 24-hour ECG tape between 11 and 12 July 2019 as an outpatient.
25. On 15 July 2019 SM enquired of the Respondent’s IT department and was informed that it would have been impossible for a field manager such as HW to alter the data generated by a visit or to edit the photographs taken. This information was passed to the manager investigating the Claimant’s grievance.
26. On 2 August 2019 SM sent the Claimant the following email as regards the delivery of a new company car for the Claimant, which the Respondent had purchased to replace a hire car:

“I understand that Straight drive have contacted you regarding replacing your hire car and that you refused to take delivery. This is not optional as the hire cars are temporary and the business will incur costs for two vehicles. We have provided you with an automatic car that is equivalent to the general fleet provided and will therefore need to return the hire car. If you choose not to take the new car that is your choice but the hire car will be collected and as such you will be contacted by Straightdrive to arrange a convenient time.”

27. On the same day the car company left the Claimant a voice message advising him that his new company car needed to be delivered the following week. On 5 August 2019 Tracy Dowell of the Respondent telephoned the Claimant regarding the delivery of the new car and he told her he was off sick, that somebody could put the keys through the door but that he wouldn’t sign for the car. He repeated that he was sick and to stop calling. He subsequently sent an email saying that he was still sick and “not at home”, and also implied that he was on annual leave (“please check ADP holiday I booked in advance and the email she sent to me when she wants the car delivered”). He further stated that the communications regarding the company car was evidence of SM’s “continuous attitude of harassment and bullying.”
28. On 6 August 2019 Pam Bumpstead of the Respondent sent the Claimant an email in which she stated that she understood the Claimant was booked on annual leave between 5 and 16 August 2019, and that she would contact him

after his leave to find out when he would be available for the cars to be exchanged.

29. On 6 August 2019 the Claimant submitted a Fitness for Work Note stating he was unfit for work for a 3-month period due to “stress related problems” and “Myocarditis”.
30. On 30 August 2019 the Claimant submitted a further Fitness for Work Note stating he was unfit for work for an 8-week period due to “palpitations and stress”.
31. On 12 September 2019 the Claimant was informed that his grievance had not been upheld.
32. On 17 September 2019 the Claimant was invited to attend a disciplinary hearing on 23 September 2019, with the option of attending via video, providing written submissions, or asking for an alternative date.
33. On 19 September 2019 the Claimant issued his claim for disability and race discrimination. He also brought a claim for unfair dismissal but this was subsequently struck out by the Tribunal because he did not have two years’ service.
34. On 23 September 2019 a disciplinary hearing was held and adjourned in the Claimant’s absence. He was subsequently informed in writing that the hearing would be held on 30 September 2019 and that it would be conducted in his absence if he did not attend.
35. On 30 September 2019 a disciplinary hearing took place. The Claimant did not attend. He was summarily dismissed for gross misconduct, namely falsifying records.
36. On 31 August 2020 the Claimant sent the Respondent transcripts of audio recordings of (i) his investigation meeting with Sarah Morris, (ii) a message from the car hire company, and (iii) an alleged conversation between himself and the alleged storekeeper of Aire Wines named “Pritam” in which Pritam, in answer to a question from the Claimant, says that nobody from the Respondent came to his shop to ask questions about the Claimant. The Claimant also sent through an audio recording of the voicemail from the car hire company,
37. On 8 September 2020 the Claimant was asked to provide copies of the audio recordings of the investigation meeting with Sarah Morris and the alleged conversation with Pritam.
38. Subsequently, the Claimant provided the audio recording of his meeting with Sarah Morris. On 23 October 2020 the Claimant was informed that there were discrepancies between the audio recordings and his transcripts of both the meeting with Sarah Morris and the voicemail from the car hire company. He was told that he had not yet provided an audio recording of his alleged conversation with Pritam.

39. On 30 October 2020 the Claimant stated that his laptop was being repaired and that he would resend the file (since he believed he had already sent it once) after his laptop had been restored.
40. On 26 November 2020 the Claimant provided an alleged audio recording of a discussion with Pritam (said to be the store manager of Aire Wines).
41. On 2 December 2020 the Respondent informed the Claimant that the metadata for the recording of the Pritam discussion stated that it was created on 23 November 2020. The Claimant responded by stating that the recording had been retrieved by a computer engineer and he had saved the clip on that date.
42. On 3 and 9 December 2020, the Respondent asked the Claimant when his alleged discussion with Pritam took place and for Pritam's full name. The Claimant declined to provide that information. In cross-examination the Claimant was also unable to provide Pritam's name. He was also unable to recall, even approximately when the conversation had taken place. He did not know if Pritam had his telephone number (it appeared not from the transcript, since Pritam did not know who was calling) and the Claimant was unable to provide a coherent explanation as to why he had Pritam's number. Further, while the Claimant said that they had exchanged numbers because they had become friends, he also said that they never messaged each other. As regards the repairs to his laptop, the Claimant initially said the keyboard was not working because it was an old computer, but when questioned as to how this would lead to files being lost he said "other things" were also wrong with the computer. When asked why he couldn't retrieve the recording from his phone, he said he had recorded it on his work phone, which he had to return, which he then accepted meant that the conversation must have taken place before he was dismissed.
43. In his evidence, HW stated that he had checked the Respondent's system and had been unable to identify a "Pritam" as being a contact at any store visited by the Claimant. He further stated that he had revisited Aire Wines on 22 December 2020 and had been informed that nobody by the name of Pritam had ever worked at the store.

Conclusions

Disability Discrimination

44. For the purposes of all the claims of disability discrimination, the Respondent accepts that the Claimant was a disabled person within the meaning of section 6 of the EqA by reason of his myocarditis.

(a) Discrimination arising from disability contrary to section 15 EqA

45. Pursuant to section 15 EqA a person (A) discriminates against a disabled person (B) if B treats A unfavourably because of something arising in consequence of A's disability and B cannot show that the treatment is a proportionate means of achieving a legitimate objective.

46. In this case the Claimant alleges that the “something arising” is that he was not able to collect stock to take to the stores from the cash and carry and alleges that because of this restriction HW carried out more audits on him than on his colleagues in the period up to 31st May 2019.
47. The Respondent accepts that the Claimant could not collect stock to take to the stores from the cash and carry and that this restriction arose in consequence of his disability. The Respondent further accepts that it carried out more audits on the Claimant than his colleagues in the period up to 31st May 2019; indeed, the Respondent submits that HW carried out more audits on the Claimant than the Claimant admits to (since the Claimant denied that any audit had been carried out on 8 May 2019). However, the Respondent denies that the reason for carrying out those audits was because the Claimant could not collect stock from the cash and carry, or for any other reason related to the Claimant’s disability. Rather, HW found discrepancies in his initial audit conducted on the Claimant on 3 April 2019 and followed those up, first on 8 May 2019 when further discrepancies were discovered, and then by way of a live audit on 31 May 2019 (which led to the instigation of the disciplinary proceedings).
48. In the light of our findings of fact above, we accept the Respondent’s submission. There is no evidence whatsoever of any link between the Claimant’s disability and the decisions taken by HW to conduct audits on the Claimant; to the contrary the evidence is that HW was following the approach any reasonable manager would have taken to investigate the discrepancies he had found and the Claimant’s purported explanation for them. Furthermore the live audit HW conducted on 31 May 2019 indicates that his concerns were well-founded because the evidence strongly suggests that on that date the Claimant uploaded data of two supposed store visits (to Nisa and Aire Wines) that he had not in fact conducted on that day.
49. At this juncture we record that at times the Claimant’s evidence bordered on the absurd; he denied the Respondent’s version of his meeting with Sarah Morris, even when his own version was contrary to the audio recording; he denied differences between the packaging (of beer) in photographs taken by HW compared to those taken by himself, when the differences were plainly visible, and each time that he was confronted with documentary evidence that undermined his case he claimed it must have been forged. As regards the evidence of Claimant’s alleged conversation with the store manager Pritam, for all the reasons set in paragraphs 41 to 43 above, together with the Tribunal’s own assessment of the recording, we are satisfied that the recording is not authentic in the sense that it is not a recording of the Claimant having a genuine conversation with a store manager of Aire Wines. Instead, we find it to be a recording of a scripted conversation between the Claimant and somebody who is pretending to be a store manager of Aire Wines that was brought into being for the purpose of bolstering the Claimant’s claims in this Tribunal.
50. The claim of discrimination arising from disability is therefore dismissed.

(b) Failure to make reasonable adjustments contrary to s. 20 EqA

51. Section 20 EqA provides that where a provision, criterion or practice (PCP) of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, A is under duty to make reasonable adjustments.
52. In this case, however, the claim of failure to make reasonable adjustments is misconceived because the Respondent did not have a PCP that somebody must drive a manual car in order to participate in the "Paint London Green" event. Since the event was an external Heineken event, Heineken organised the cars and any such PCP would have been that of Heineken and not the Respondent. Moreover, even if the claim were put on the basis that the Respondent had a PCP that any employee wishing to volunteer for the event had to be able to drive a manual car, it is plain the Respondent had no such PCP. The Claimant was able to volunteer, despite being unable to drive a manual car, and HW helped him with the necessary paperwork. It appears that either the Claimant did not realise that he had to inform Heineken to provide him with an automatic car, or that Heineken forgot that he needed one. Even if (which is not suggested by the evidence) the fault lay with the Respondent in forgetting to tell Heineken that the Claimant needed an automatic car, this was not because of a PCP but because of simple oversight, the Respondent assuming that the Claimant would inform Heineken himself. In any event the Claimant was able to participate in the event as when it became clear the Claimant was unhappy with the situation the Respondent found a further volunteer driver who could drive the Claimant as a passenger in the manual car.
53. The claim of failure to make reasonable adjustments is therefore dismissed.

(c), (e) and (f) Disability related harassment contrary to s. 26 EqA

54. Pursuant to section 26 of the EqA, A harasses another, B, if A engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether the conduct has that effect, B's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect must all be taken into account.
55. As regards the alleged comment by HW, as stated above at paragraph 12 we are not satisfied that HW said to the Claimant at the "Paint London Green" event in a derogatory manner, or at all, that "you should get a disabled badge if you can't drive a manual."
56. As regards the allegation that SM set the date for the Claimant's disciplinary hearing on 25 June 2019 knowing that he was unavailable due to a medical appointment, we consider that if a manager insisted on holding a disciplinary hearing on a date when an employee had a hospital appointment related to his disability that this would potentially be capable of amounting to harassment under section 26 EqA. However, in this case we have accepted SM's evidence that she simply forgot about the Claimant's appointment when she arranged the date of his hearing (see paragraph 20 above). It is also plain that when the

Claimant complained about the clash of dates the disciplinary hearing did not go ahead on 25 June 2019. In these circumstances we do not consider that in arranging the Claimant's disciplinary hearing for 25 June 2019, SM engaged in conduct that had the purpose of violating the Claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him. Neither did it have that effect; even if the Claimant genuinely felt harassed, given that the hearing date was immediately changed, and (contrary to the Claimant's assertion) the hearing did not take place on 25 June 2019, it was not reasonable for the conduct to have that effect.

57. As regards the allegation concerning the car, the Claimant alleged in his witness statement that SM "bullied me to come back to work in an email on Aug 2nd 2019 regarding company car delivery even though I was off work sick...". It is clear, however, that SM's email of 2 August contains no reference to the Claimant returning to work. The Claimant was simply being asked to take delivery of his new company car and hand over the keys to the existing rental car in order to avoid the Respondent incurring the costs of both vehicles at the same time. While the email may have been unwanted, we are not satisfied that it related to the Claimant's disability or that it could be said to have the effect of violating the Claimant's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him for the purposes of section 26 EqA. Even if the Claimant genuinely felt harassed, we do not consider that it was reasonable for SM's conduct to have that effect in the circumstances. In this latter respect, the Claimant repeatedly said in evidence that at the time he was "fighting for his life". However, the evidence does not come close to supporting this assertion (see above at paragraphs 22, 24, 29 and 30) and although the Claimant had submitted a sick note on 2 July 2019 stating he was not fit to attend work, there is no evidence to suggest he was not fit enough to hand over a set of car keys at his home at a date and time which suited him. We also note in passing that in fact the email of 2 August 2019 was sent between the expiry of the Claimant's fit note which covered the period 2-31 July 2019 and the submission of a further sick note by the Claimant on 6 August 2019.

58. The claim of disability related harassment is therefore dismissed.

Direct race discrimination contrary to s. 13 EqA

59. The Claimant alleges that because of his race HW refused to grant him annual leave to attend a hospital appointment on 25 June 2019. In making such a claim of direct discrimination the initial burden of proof rests with the Claimant to show acts from which an inference of discrimination could be drawn, however in this case there are none. The Claimant does not explain why he considers the refusal was linked to his race or suggest that HW ever made any comments about his race which would lead him to this conclusion. In any event, we have accepted the evidence of HW that the reason why the request for annual leave was refused was nothing to do with the Claimant's race, but because HW had advised the Claimant to make a request for authorised leave as he (the Claimant) would not be expected to use his annual leave for a medical appointment (see above at paragraph 17). Since, for this reason, HW did not

approve the request for annual leave, the Respondent's systems automatically generated an automatic response stating that the request had been rejected.

60. Accordingly, the claim for direct race discrimination is also dismissed.

Employment Judge S Moore

Amended Date: 11 February 2022

Sent to the parties on:

28 February 2022

For the Tribunal: