EMPLOYMENT TRIBUNALS

Claimant: **Stephen Frost**
Respondent: **H.E.C. Contracting Limited**

AT A HEARING

Heard at: **Leeds by CVP video link** **On:** **4th, 5th & 6th October 2023**

Before: **Employment Judge Lancaster**
Members: **J Blesic**
DW Fields

Representation
Claimant: Ms I Baylis, counsel
Respondent: Mr J Searle, counsel

JUDGMENT having been sent to the parties on 11 October 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided, taken from the transcript of the oral decisions delivered immediately upon conclusion of the respective parts of the case:

REASONS

LIABILITY

1. We dismiss the complaint in relation to holiday pay which was withdrawn in correspondence. That leaves three substantial claims with which we have been concerned, a claim of direct disability discrimination, a claim of disability related discrimination under section 15 of the Equality Act and a claim of unfair dismissal. It is not entirely clear to us whether there is still any issue in relation to whether the proper notice pay was paid or not but that can be resolved in due course[1].

[1] It subsequently became clear in the course of submissions on remedy, that this claim too was effectively withdrawn.

Disability

2. Firstly we deal with the question of disability discrimination, under both sections 13 and 15 of the Equality Act 2010. It is disputed in this case whether or not Mr Frost meets the definition of a disabled person under section 6 as supplemented by schedule 1 of the Equality Act. Because this is a contested matter, it is for the claimant to prove that he is disabled and in this case our primary conclusion is that Mr Frost has not been able to do that, so we hold that he did not meet the definition of disability at the relevant time.

3. We have sympathy with Mr Frost because we appreciate that he has had difficulty collating the necessary evidence to seek to substantiate this part of his claim. And it does appear that he has had to do that without any direction from those representing him until Ms Baylis of counsel, very late in the day, sought to produce some potential evidence.

4. What we have had is simply a very brief letter from an advanced nurse practitioner at the claimant's GP surgery. That is dated 9 May of this year. That nurse has had no personal contact with the claimant, so clearly this letter is simply made on review of the records. It is unfortunately carelessly worded and lacking in precise detail. There are no medical records from the GP practice or any other place to substantiate that. Then there is the self-prepared disability impact statement, which again unfortunately is somewhat confused. And on occasions it is clearly inaccurate in so far as it relates to the timeline: he ascribes matters to the course of his employment (which was from 2016 onwards) which clearly pre-date that period. Then subsequently, with the help of Ms Baylis, we have received confirmation that he did have one doctor's appointment on 25 July 2022. But there is of course no doctor's note to cover the period of two weeks' absence which he had from work at around that time. We also have now confirmation that as of today he is taking prescription painkillers.

5. What we are therefore able to ascertain is that in 2010 the claimant, as he has told us, was diagnosed with the condition ankylosing spondylitis. Although the wording is not, as we have said, as careful as it should be that appears to be corroborated from the note from the GP's surgery.

6. The claimant also tells us, and we have no reason to doubt this, that at that time he underwent extensive treatment. He was receiving a course of injections. He had to attend the hospital regularly for haematology checks, and he is described in the course of the nurse's note as therefore being under rheumatology at the hospital. However the claimant's evidence is that that lasted for some 12 months. That is that it would have ended in 2011. In the course of the hearing, I think as a result of a slip of the tongue, I referred to that being from 2013, but the claimant's evidence is that that was in the first 12 months after the diagnosis from 2010. After the end of that 12 month period in 2011 until July 2022, that is for some 11 years, he did not ever attend at his GP surgery complaining about his back condition and nor was he prescribed any prescription painkillers. He has told us that he would use over the counter analgesics, Ibuprofen or Paracetamol as and when he felt he needed them.

7. In March 2022 the claimant had two days absence with back problems. At or around that time it appears that he had physiotherapy. If he had had physiotherapy previously again the evidence we have is that it was around that time immediately

following the diagnosis. On at least one occasion, possibly two, through the precise dates are not clear, the respondent accepts that they authorised him to take paid leave to attend physiotherapy appointment: though we accept the respondent's evidence that nothing specific was stated as to the reason why he was attending a physio on those occasions. That was up to that point the only period of absence during the course of his employment which commenced either in July or October 2016, is it still as yet unclear which date is correct. That is between five and six years into employment before there is any absence with any issue arising from back problems.

8. In July 2022 the claimant was absent again, this time for a two week period. On that occasion he again attended physiotherapy and in a series of short text exchanges with Mr Horsfall, on 29 July he notified the respondent about his condition. Having now had his second physio appointment he said: "it hasn't really done much. He thinks its my (and there is a typing error) "anylosing" spondylitis flaring up again. I'm going to see doctor again on Monday if possible and see if I can see a specialist so there is a good chance I won't be in next week. So sorry". It is accepted and we accordingly find, in fact, that was the first time that there was any reference by the claimant to any underlying diagnosis of ankylosing spondylitis, though, as we say it was misspelt within that text. When first applying for the job in 2016 the claimant had made no mention of any medical condition. Then in 2020 when the company personnel records were updated he had expressly sated that he did not suffer from any disability.

9. There is on the face of it a period of 11 years where any substantive adverse effects had ceased to impact on the claimant's normal day to day activities. Within his impact statement he makes very general but unparticularised claims of adverse effects, but principally his concern is that driving caused discomfort. However throughout the whole of the period, and particularly during his employment, he was required to drive long distances and was able to do that, apart from those two brief occasions where he was physically absent from work. Following the first absence in March it is accepted that he did make general observations about the fact that driving was uncomfortable and as a result of that in early April, when the respondent sourced a new fleet of vans, he was given priority and allocation of one of those. But apart from that, although the claimant says his condition had been deteriorating for a year, as we say he had not had time off work, and he had not raised any particular complaints about the level of driving he was doing[2].

10. We are left with the position that this would appear therefore to be a past disability in 2010 and 2011. But having gone into an 11 year period of remission, the substantive outbursts affected ceased and it would only be a disability as defined in the Act if then the substantial adverse effects were likely to occur. We accept of course that likely to recur in this context means "could well happen".

11. Alternatively, if there was then an actual recurrence of the substantial adverse effects spanning a period of more than 12 months, that too would meet the definition of disability.

12. We have no medical evidence whatsoever as to what the position was when the claimant ceased to have treatment in around 2011 and whether his ankylosing

[2] The Guidance on the Definition of Disability 2011, also suggests that it would not be reasonable to regard as having a substantial adverse effect "Experiencing some discomfort as a result of travelling, for example by car or plane, for a journey lasting more than two hours."

spondylitis was likely to result in recurrent substantial adverse effects in the future. And absent that medical evidence we cannot indulge in conjecture. When we move forward to the second stage, that is July, the only information we have is a hearsay account from the claimant that his private physiotherapist had expressed an opinion that "he thinks its my ankylosing spondylitis flaring up again". That is not corroborated by any medical evidence from a doctor, and we repeat that there was no fit note issued at this time to state the reason for absence. It is also wholly unclear whether having attended the GP on the 25th the claimant was in fact then prescribed any prescription medication. He is certainly taking those stronger painkillers now but his evidence is unclear as to whether that prescription started from 25 July of last year or whether, as he first thought in evidence, it was a shorter period within this year 2023 or perhaps to the very end of 2022.

13. In the absence of that clear evidence that this is either a past disability which was likely to recur or that it is an underlying condition which in fact has had recurrent substantial adverse effects, albeit with a gap of 11 years in-between, we are not satisfied the claimant has established that he meets the definition of a disabled person.

Direct or disability related discrimination

14. But even if we were wrong on that it would on the facts that we have found not affect either of his claims either for direct discrimination or disability related discrimination. They would both fail on their facts even if he were disabled.

15. The first claim is of direct discrimination, that his dismissal on 10 August was *because* he was disabled. What the claimant seeks to rely upon as facts from which we could conclude absent any explanation that that was the case[3] are: the fact that the dismissal followed chronologically very shortly after his return from the two weeks period of absence where he did have back problems ,and; that in the course of that two weeks' absence he has specifically disclosed the belief of his physiotherapist that there was a recurrence of a condition of ankylosing spondylitis. From that he surmises that the reason why he was dismissed was that the respondent, meaning Mr Horsfall, believed that in those circumstances and particularly where he had indicated that he may wish to see the doctor with a view to being referred to a specialist ,that he would have substantive periods of absence in the future because of this back problem which was now named and identified.

16. However in the context where there is nothing in the course of Mr Horsfall's communications on this occasion or the earlier occasion of absence in March to indicate any disquiet with the claimant taking time off (where his very brief text replies are perfectly civil and supportive), and where the claimant had in any event returned to work on 8 August after a very short period of absence, those are not sufficient facts to reverse the burden of proof.

17. But even if they were we are quite satisfied on the evidence we have heard from Mr Horsfall that the claimant's alleged disability, the ankylosing spondylosis, played no part whatsoever in the reason for dismissal. Mr Horsfall set out in a letter of 10 August why the claimant was being dismissed. It references historic issues about why he was unable according to the respondents to work on particular sites, issues with his time keeping and therefore a belief that the criteria for redundancy dismissal had been met. That was the stated reason for termination and Mr

[3] Section 136 Equality Act 2010

Horsfall, who we observed we find to be a perfectly frank although forthright and perhaps opinionated witness, has honestly stated that the claimant's disclosure of a potential underlying back condition and the fact that he may seek to see a specialist played no part whatsoever in his decision, that it did not cross his mind. We accept this evidence. Of course there is no evidence the claimant was in fact referred by his GP to a specialist or that he has ever seen one. All we know is that subsequent to these events, at some unidentified time, he has been prescribed stronger analgesics and continues to take those.

18. On the claim of disability related discrimination there is also an issue as to knowledge[4]. The respondent's pleaded case was that they deny knowledge of disability. At the preliminary hearing in front of Judge McAvoy-Newns there is a brief paragraph that indicates that it is accepted that they knew of the alleged disability from 29 July. That is clearly a reference to the date of the text where the claimant disclosed the name of his condition. But subsequent to that in correspondence of 14 June the respondent has clearly re-asserted their position that knowledge is still in issue and clearly it is.

19. The fact that the claimant having worked for over five years without absence, having undertaken lengthy driving duties without any particular complaint was absent for two days in March and the fact that he subsequently then had a further two weeks absence in the course of which he made reference to a potential underlying back condition but without giving any further details is not, we find, sufficient to put the respondent on notice that he actually had a disability. He had two very brief periods of absence in relation to back problems and he named a condition which in the opinion of his private physiotherapist may be a recurrence of ankylosing spondylitis.

20. But in any event the "something arising from disability" which is said to be that two weeks absence in July, was, we find on the facts, not the reason why the claimant was dismissed. We repeat the observation that there was a clearly stated and unrelated reason for termination. Whilst we accept that it was during that final two week absence that the respondent re-deployed another employee, Mr Martin Gibson, to cover the claimant's supervisory duties at the site in Bury and it was during that period that the client, Six Towns, observed to the respondent that they were happier with Mr Gibson and did not wish the claimant to return, that is merely contextual. Whilst the claimant was absent those matters arose but the reason for the termination was not the fact of his absence, even if it did result from a known disability.

21. In these circumstances we have not had to consider further the specific defence of justification under section 15(1)(b) of the Equality Act. But we do observe that if there had been any disability related discrimination it is at the very least potentially justifiable, which is the respondent's case, in that there was a legitimate aim of the successful and efficient running of the respondent's business and the retaining of its client basis. For those various reasons, even if the claimant were disabled which we find he was not, neither of those complaints would have succeeded.

[4] Section 15(2) Equality Act 2010; "Subsection (1) does not apply if A shows that A did not know, and could not reasonably have ben expected to know, that B ha the disability."

Unfair dismissal

22. That leaves the complaint of unfair dismissal. It is for the respondent to show the reason or if more than one the principal reason for termination[5]. That is set out in the letter of 10 August and the claimant is told then that he is being made redundant. There is an alternative factual matrix set out which might have given rise to disciplinary action on grounds of capability, performance management or misconduct in not working to his proper hours or applying himself diligently to his work. But although they express that in the alternative, the respondent chose to dismiss for redundancy and that is the reason that they put forward before this Tribunal.

23. We are satisfied, and it is not a high burden for the respondent in this instance, that they have established that this does meet the definition of redundancy. That of course is to be found in section 139 of the Employment Rights Act 1996. That is that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the relevant provision, which is here that there has been a diminution in the requirement of employees to carry work of a particular kind in the place where the employee was employed by the employer. Further, under subsection 6, cease or diminish may be whatever reason.

24. There are two parts of the statutory definition which specifically allow for there being other concurrent reasons having a bearing on the redundancy. Those are the fact that he is taken to have been dismissed for redundancy if the dismissal is wholly or *mainly* attributable to the diminution in requirement or employees to do work and also that the reason for that diminution in requirement may itself be for whatever reason.

25. The context, we find, is that the claimant, who was employed as an electrical supervisor but without formal qualifications, was therefore limited in the number of sites he could be allocated to work. That is because some clients would specify within their contract with the respondent company that the supervisor did require the formal qualifying certificates.

26. On those sites where the claimant had been allocated to work most recently, we find, accepting the respondent's evidence that there had been issues with the client when he had worked on sites for Sheffield City Council in October 2021. This particularly was a period where the claimant covered for a three week holiday absence and Issues arose during h time. We accept that that did result in express complaints made by the project manager for the council together with a manager of the respondent and in the presence of the claimant. There is communication from October where the respondents had to placate the client by assuring them that the temporary covering holiday manager, that is the claimant, was no longer to be working on site. So that is corroboration that there were indeed issues which had arisen, and we accept the respondent's evidence that they were also told verbally - although it is not documented - that Sheffield City Council would not be content with the claimant returning to work.

27. Similarly when the claimant worked for a client, Kier, in Leeds we accept the respondent's evidence that a manager of Kier on or around 11 April told them verbally that they were not happy with the claimant. Arrangements were then made

[5] Section 98 (1) Employment Rights Act 1996

to replace him with a subcontractor and that happened on 29 April. There is documentary evidence to suggest that shortly after that period there were still concerns about whether the work was ready to handover to the next stage of building, that those arose from perceived lack of supervision and they pre-dated the change at 29 April. These were issues that carried on. Whether or not that contract was subsequently lost to the respondent because of any actions that may be attributable to the claimant or because supervening actions on the part of the new subcontractor is not material to the issues in this case. We are not in any position to make a finding about that, and as we say in any event it does not matter to our decision. But having been moved from the site on 29 April, the claimant then was transferred to the site of Bury, the Six Towns Housing contract, and following the period of his two weeks absence in July, we also find that the client there verbally instructed the respondent that they did not wish the claimant to continue.

28. We have already alluded to the fact that the context was that during that period the respondent had re-allocated his supervisory work to an existing employee who was already working on site and that the fact that the client was unhappy was communicated to the claimant. This was admittedly done, either in a very short meeting in the car park on 8 August after he returned or at the similarly short meeting on the 10th when he was handed the letter of termination. On balance we think it more probable that the claimant is right that that happened at the first meeting on the 8th. That is because contextually it is common ground that comments were made on that occasion in a somewhat sarcastic tone by Mr Horsfall that he wished he was able to stop work at 1.30. The context for that comment , we find, was that the client Six Towns had expressed concern that the claimant was not present in the afternoons. There was therefore a lack of supervision and that for that reason they did not wish him to remain as the supervisor. So it is entirely plausible that both those matters were discussed in the brief meeting on the 8th.

29. The position as of the 10th was therefore that the respondent had the client where the claimant was immediately assigned in Bury saying they did not now wish him to work there, they had issues reported to them by previous sites where he had worked that meant they believed they could not relocate him back to those sites and they had a number of sites where they could not allocate him to work in any event because of his lack of formal qualifications.

30. In those circumstances we are satisfied that the definition of redundancy is made out. There was a diminution in the requirement for the claimant, as an unqualified electrical supervisor, to work at that particular place in Bury. The reason for that is immaterial under subsection 6, but it was because the client was dissatisfied and also because the respondents and the client had discovered that they were able to re-allocate the supervisory work. Of course the client did require there to be full-time supervision but the respondent was able to manage that by a re-distribution of duties. The claimant's position has never been replaced so the number of employed electrical supervisors has reduced following this termination. The fact that there may have been issues related to performance, and that they had never been explored in a formal disciplinary process, underlying that decision does not prevent it from meeting the definition of redundancy. The fact that the respondent plumped for redundancy rather than any performance management or conduct disciplinary process is very strong evidence that that was indeed the principal reason. It does not matter in our view that that choice of label may also have been

motivated by a desire to do the best for the claimant and secure a redundancy package for him, which of course he would have been denied had they pursued alternative procedures which had indeed led to his dismissal. The fact that it is a redundancy is corroborated by the terms of the letter itself and the evidence we have heard that, although it was done privately between the respondent's operational management and their HR manager, there was discussion about the possibility of re-deployment. Re-deployment of course is entirely consistent with there being a redundancy situation where a redundancy dismissal might potentially have been averted, but for the reasons we have already alluded to, we conclude that that was not possible in the circumstances.

31. We are satisfied that the claimant was dismissed on 10 August for a potentially fair reason which was redundancy, meeting the definition within section 139. Whatever the reason even if it had been potentially the alternative fair reasons of capability or conduct, this would however, on any view, be procedurally unfair. The difference of course is that those procedural considerations will vary depending upon the reason for dismissal because we must under section 98 (4) consider whether it is fair or unfair having regard to the reason given. So in this case we are of course therefore particularly looking at the normal standard of fairness as expressed in **Williams v Compair Maxam Ltd.[1982] ICR156**. Those considerations are reproduced in the standard case management orders of Judge McAvoy-Newns as the issues we have to address in determining whether in all the circumstances this was a fair dismissal on grounds of redundancy.

32. Because there was no process followed with the claimant, apart from the very brief conversation on the 8th where he was forewarned that he was going to have to be removed from site at the instance of the client and was alerted to the fact that there were issues about his perceived timekeeping, he had had no prior consultation. We do therefore make a declaration that the claimant was unfairly dismissed albeit for the fair reason of redundancy. That and potential issues about the period of notice are the only matters therefore that need to be addressed in terms of remedy.

REMEDY

33. We have reached a decision on what is the just and equitable level of compensation flowing from this procedurally unfair dismissal and the starting part of course is that we are looking at what would be fair having regard to the fact that there was a redundancy. The requirement for a specifically employed electrical supervisor at the Bury site had ceased because of the various factors we enumerated in our liability decision. That meant that the total number of employed electrical supervisors across the company was also reduced in total from five to four.

34. The claimant was not given any prior notice of the possible redundancy before the delivery of the letter on 10 August. Had he been given that opportunity he should have then been invited to a meeting to discuss any alternatives that may have avoided his being made redundant, and of course that would also have looked at the possibility of suitable alternative employment.

35. We have been referred to the authority of **King v Royal Bank of Canada Europe Limited UKEAT/0333/10/DM**. This case is not directly applicable because it concerned where any obligation lay to provide information about potentially suitable alternative vacancies during the period that should have been taken up with consultation with an employee dismissed for redundancy. No firm decision was taken in that case about where any burden of proof lies, and in fact in that decision and referring back to the earlier authorities of **Virgin Media v Seddington [2009]UKEAT/0539/08/DM** at paragraph 15.and **Software 2000 Ltd v Andrews [2007] IRLR 569** it would depend upon who had access to that information. So of course primarily the respondent employer would know about which vacancies existed with their organisation but equally it would be the employee who would primarily have the information as to which of those potential vacancies may be acceptable. This, however is not a vacancy case.

36. What the respondents have done is to adduce evidence, which we accept, that there were no vacancies for employed electrical supervisors. They have also adduced evidence which we accept that there was a limited scope for the claimant to be employed across other sites because of the issues he had had with previous clients or because of his lack of qualifications. Whilst, however it is right to say that he was not afforded the opportunity to explore possible alternatives, that would have entailed in effect re-allocating some of the supervisors' responsibilities on other projects, so removing duties from their workload to create a new post which the claimant may have covered by taking on those areas of responsibility. That would not be appointing him to a vacancy, it would be creating a new position and it would effectively be failing to acknowledge the fact that there had been a perceived diminution in the requirement for the total number of supervisors.

37. Again, we accept the respondent's evidence that all the elements of supervision across their sites were at this point adequately covered whether by the employed supervisors, whether by subcontractors filling that role or whether on occasions, if the contract permitted it under the terms as to the client's requirements as to the level f site supervision. by other contract managers. So had the claimant been afforded that advanced notice of redundancy and afforded the opportunity to consider alternatives and to discuss any such possible proposal of re-ordering the work of others to keep him in employment, not to fill a vacancy but to create a new post out of the existing work which was already satisfactorily being dealt with, we are satisfied - albeit somewhat unusually - that this is a case where that consultation would have made no practical difference to the eventual decision.

38. We must also bear in mind that any such discussions with the claimant that would have avoided him being dismissed were in the context where the respondents might mount an alternative challenge on the basis of lack of capability or conduct in that he was not attending appropriately at work. So had there been the appropriate consultation and enquiry, in these circumstances given the evidence which we have heard and accept about how supervision was covered within the company and given the further surrounding circumstances, we consider there was a 100% probability the claimant would still have been dismissed.

39. But that process would necessarily have taken some time. We do not accept Mr Searle's assertion that it could have been done as quickly as two weeks. We

consider that the appropriate length of time to have conducted any such further enquiries with the claimant, who no doubt would have remained on suspension during that period because he would not have been allowed back on site at Bury, would have been four weeks.

40. The net effect of that is that his termination would have been delayed by that period of a further 28 days. He would have received net payment for a further four weeks. On the agreed figures of £580 per week that will be £2320. But the claimant has already been overpaid in terms of pay in lieu of notice by being given six weeks' notice instead of five[6], so we can effectively treat that as a three week additional period. That is a total net of £1740. But the claimant has also been overpaid because the basic award to which he would be entitled for this unfair dismissal is properly calculated at 5 times 1 ½ weeks' pay which is £4282.50, where in actual fact he received £5139 which is an excess of £856.50 which of course equates to a further 1 ½ weeks. That falls then to be deducted from the compensation element. The basic award is extinguished by the excess redundancy payment but there is still the further excess of £856.50 and when that is deducted from the £1740 it leaves a balance owing to the claimant in this case of £883.50. We treat that as payable within the first three weeks after the summary termination and necessarily for that period he would have been entitled to Jobseekers Allowance so the recoupment provisions do not apply. He is entitled to be paid forthwith the outstanding sum of £883.50 but that is the totality of the award that we consider is just and equitable in relation to this somewhat unusual case of unfair dismissal.

COSTS APPLICATION

41. The respondent makes an application for costs under Rule 76 of The Employment Tribunals Constitution and Rules of Procedure Regulations. That is limited to counsel's refresher for the third day of the hearing. It is on the basis that following a costs warning letter dated 18 September it is unreasonable for the claimant to have persisted in the allegations of disability discrimination and therefore it added to the length of the hearing.

42. Within that letter, the respondent's solicitor it must be said has correctly called the aspects of this case as we have found. That is having considered the evidence, documentary and witness statement, the claimant falls short on what he has been able to adduce to prove his claim of disability, that he has been unable to establish constructive knowledge in the circumstances of what was known to the respondents about his back condition and that he has also failed to establish the necessary element of causation between the fact of his disability or the fact of his absence in July.

43. However having said that we do not agree with the respondent's solicitor saying in that letter that this claim had therefore no reasonable prospect of success. We have come to those same conclusions where we have had to hear the evidence. It is also right that there were number of contested matters which were not at all clear cut, they may have been a somewhat more peripheral relevance to the issues in the case but they still required to be explored and they raised potential questions

[6] It is not now disputed that the correct start date was 24th October 2016, as set out in an electronic copy of the contract of employment which has now been produced.

as to the credibility and accuracy of the evidence given for the respondent. Most particularly much of the background to this case did turn upon our acceptance of the oral evidence of Mr Horsfall. Although there was documentary evidence in support of that which provided some corroboration, it was by no means in itself conclusive.

44. So, the issue is, having received that warning, was it unreasonable conduct on the part of the claimant to continue? On balance we conclude that it was not and we would not in any event in these circumstances have exercised our discretion to award costs. That is in particular because we note that the respondent, whilst making that application without prejudice save as to costs, failed to make any concessions as to what is on the face of it clearly a procedurally irregular dismissal for redundancy. And of course in that context Ms Baylis heavily emphasised the fact that given that almost total failure of any procedure, apart from the brief submission of a letter at a short informal meeting, inferences might possibly have been drawn. On the evidence we have declined to draw any such inferences or to reverse the burden of proof and have accepted the oral evidence of Mr Horsfall as to what was his motivation. But that does not mean the claimant acting on legal advice, even given the shortfalls in his evidence and in his discrimination claim that were set out in the September letter, was being unreasonable in still pursuing this complaint alongside his strong unfair dismissal claim.

45. We do not award costs as claimed and that therefore is a conclusion of all these proceedings.

Employment Judge Lancaster

Date 20th October 2023