



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms C Palin-Stokes**

**v**

**Minor Weir & Willis Limited**

**Heard at:** Birmingham by video

**On:** 19 to 22 February 2024

**Before:** Employment Judge Robin Broughton  
Ms N Gill  
Ms S Outwin

**Appearances:**

For Claimant: in person

Respondent: Ms Ferrario, counsel

## REASONS

The Claimant's claims of victimisation and a failure to make reasonable adjustments failed and were dismissed by judgment dated 22 February 2024. Her application to add a further claim of a failure to make reasonable adjustments was refused.

Further to a request for written reasons, the following are provided:

1. The Claimant brought claims of a failure to make reasonable adjustments and for victimisation arising out of her employment as accounts receivable clerk (credit control) with the Respondent in the latter part of 2021 and into the early part of early 2022.
2. She was originally interviewed for the role, in August and September 2021, by Wayne Burman who became her line manager.
3. She was offered the position and completed a medical questionnaire. In the questionnaire produced before us, the Claimant had disclosed that she had suffered from migraine headaches and was on medication in relation to the same, stating that it did not affect her day-to-day activities as a result.
4. The form did not disclose any other conditions on the documentation before us and stated that there were no other relevant health problems.

5. The Claimant's evidence before us, however, was that this form was not accurate and must somehow have either been amended or subject to some computer glitch that had meant that some of her disclosures had not shown up.
6. Specifically, she said that she had answered "yes" to the enquiry about whether she had ever suffered from anxiety and, indeed, stated that she had included medication that she was receiving for that condition, albeit it was medication that her doctor said was provided for migraines and/or anxiety.
7. There was no evidence before us that the Claimant had suggested, prior to her oral evidence, that the form was inaccurate. In fact, on our review of the evidence, we didn't see that the word anxiety, or any suggestion of that diagnosis, had ever appeared in the contemporaneous documents.
8. That is not to say that the Claimant did not suffer from anxiety. It was acknowledged at the preliminary hearing that this was part of the Claimant's disability where it was confirmed that she met the definition of the Equality Act 2010 in that regard.
9. Witnesses for the Respondent said they were unaware of any computer issues with the onboarding medical questionnaire, which was outsourced to a third party, such that they said they wouldn't have been able to amend it, in any event. There was no other documentation from the Claimant either during, or shortly after, her employment that even referenced the word anxiety or the alleged disclosures on the medical questionnaire.
10. We heard that the nature of the Claimant's role was discussed during the interviews and the fact that, inevitably, the credit controller in a business would work alongside the sales administration team.
11. We also heard that some of the Respondent's larger customers used a process called Electronic Data Invoicing, or EDI, which was a system that the Claimant was previously unfamiliar with.
12. There were significant disputes about the extent to which EDI was discussed, either at interview or in the Claimant's early employment, but, either way, it was a software package which the Respondent used and which the Claimant was previously unfamiliar with.
13. The Claimant started work on 13 September 2021. Her employment was subject to a six-month probationary period. She was provided with a job description, and she took a day's annual leave on the 15 September that she had requested during the interview process.
14. We heard that the early weeks of her employment progressed well, albeit there was a dispute about whether or not she received training on the EDI tool.

15. That said, it appeared to become common ground that she never used it during the course of her employment, and subsequently it appears to have been acknowledged by Mr Gill, the head of finance that her training, if any, was not adequate for completing the necessary work on that tool.
16. It was also common ground that, in early November 2021, the Claimant and other staff within the Respondent seemed to suffer from a virus. Some of them, including the Claimant, were allowed to work from home, the Claimant doing so on 4 and 5 November, to avoid the infection spreading.
17. Around that time, Mr Burman became aware that certain large customers had not been receiving their invoices through the EDI system and, indeed, that there were other issues with the sales administration team.
18. On 15 November 2021, Mr Burman had a conversation with the Claimant during which he asked her to help out with certain of the sales administration tasks. The Claimant felt that she had insufficient time to do so.
19. Nonetheless Mr Burman asked her to prioritise this work, seemingly suggesting that others could potentially cover or back-fill her existing work. Following the meeting, however, the Claimant sent an email to Mr Burman to say that she did not want to help out with the sales administration work and, it appears, that she did not do so.
20. On 16 November 2021, the Claimant sent a text message to Mr Burman requesting a day's annual leave that day, saying that she had not slept the previous night due to family issues. We heard that she had some concerns about contact proceedings that were ongoing in the Courts, with her son not wanting to see her.
21. Mr Burman said that he reminded the Claimant of the appropriate process for reporting sickness (or indeed requesting holiday) at that stage, but he did, nonetheless, approve the leave. He said that he reminded the Claimant that she should, in future, call the HR line dedicated for this purpose and that holiday requests required prior notice and approval.
22. At this point, it appeared that the Claimant had not raised any health issues with Mr Burman other than saying that she had not slept the previous night, and that appeared to relate solely to her personal circumstances. That was how the Respondent reasonably understood things at least.
23. Moreover, the contemporaneous evidence showed that the Claimant was pleased to return to work, which is understandable and often helpful when going through difficult personal circumstances.
24. It was common ground that, towards the end of November 2021, the Claimant was complaining more regularly about problems that she was encountering, arising from the sales administration team and how this was

affecting her work and workload. She also appeared to be keeping him updated on her personal family issues. The principal concerns appeared to relate to issues in the sales admin team including pricing problems and invoices not being generated or not being forwarded to the customers, which then created issues for the Claimant when she was chasing debts.

25. Mr Burman felt that most of this work nonetheless fell within the normal remit of the Claimant's role in accounts receivable. He also considered that she had sufficient capacity to carry out the work, albeit that was disputed.
26. On 1 December 2021, Mr Burman had a further conversation with the Claimant, including about the sales administration issues and, to a degree, the EDI re-invoicing process. It appeared he again asked her to stop doing what he considered to be less urgent tasks and to focus on helping out in this area.
27. The Claimant again refused, or at least stated that she was unable to stop her other duties. Mr Burman felt that she was focusing too much of her time on smaller customers and smaller debts, and that she should put this work aside and focus on what he considered to be the recovery of the larger and more important debts.
28. On his case, he was merely re-allocating her duties, rather than giving her additional work. Indeed, his unchallenged evidence was that he agreed to assist her and that he started to work out of hours, specifically focussing on sending out the EDI invoices, acknowledging the issues in sales admin.
29. On 2 December 2021, the Claimant, was still having significant personal difficulties outside of work. She sent an email to Mr Burman having texted early that morning to advise him to look at his email. She stated that she was taking a day's annual leave rather than requesting it. She again said that this was because she had not slept the night before due to worrying about her personal issues. Apparently, she was not going to be able to see her son at Christmas.
30. She did, however, also express concern about her perception of the conversation she'd had with Mr Burman the day before.
31. Without repeating the whole email here, towards the end the Claimant did say that she was struggling emotionally with her "mental health", although there was a dispute about whether this comment related to her personal circumstances or the work situation, or both.
32. Mr Burman accepted during his evidence that he must have seen this email because he had said that he'd followed it up to again reiterate the Respondent's policy in relation to sickness and / or holiday absences. His evidence in general in relation to this email was, at best, unreliable.

33. Nonetheless, it appears that he viewed it, perhaps understandably, as principally relating to the Claimant's personal issues, but there was no evidence that he shared it with HR or anyone else.
34. That said, contrary to his claims about reiterating policy, he did not appear to have addressed the contents of the email with the Claimant. They were only in the office together for perhaps half a day thereafter, before his annual leave which commenced on the 7<sup>th</sup> of December for 10 days.
35. On 7 December, as soon as Mr Burman was on leave, the Claimant went down to the HR department and spoke to Leyton Hughes, the HR Director. She again stated that she did not want to take on sales administration tasks and was complaining about the workload that was resulting from sales administration failings.
36. The Claimant maintained that she told Mr Hughes that she was unable to cope, and even that she felt she was receiving discriminatory treatment. This was denied by Mr Hughes who said that all that was raised was the Claimant's workload and that she'd felt Mr Burman had not listened to her in that regard.
37. Following the conversation, the Claimant was asked to confirm what she had said in an email, and she did so that same day. The short email produced only referenced the sales administration tasks and there was no mention of the Claimant's health, let alone alleged discrimination, despite the Claimant's evidence that she was by this stage putting everything in writing because she felt that her oral conversations would not be taken seriously.
38. Mr Hughes responded to the email saying that he would contact her if he needed anything further.
39. The Claimant claimed before us that she had also forwarded to Mr Hughes her email to Mr Burman of 2 December. That had never been suggested before her oral evidence before us and the Respondent denied receiving it. Whilst there was evidence of the Claimant forwarding the email to herself that day, there was no evidence that the email was re-sent or forwarded to the respondent, although the Claimant claimed that in a subsequent conversation with Mr Gill it was referenced.
40. Mr Hughes, in addressing what he understood to be the Claimant's concerns, spoke to Rajinda Gill, who was Mr Burman's line manager and therefore covering the situation in his absence. Mr Hughes' evidence was that, when he subsequently spoke to the Claimant on or around 10 December 2021, the Claimant confirmed that she was happy with how Mr Gill had addressed the issue.
41. Mr Gill met the Claimant on 8 December 2021 and again on the 9<sup>th</sup>, with a colleague from sales administration, to discuss the issues in sales administration, the EDI system and the problems with invoicing and re-

invoicing. He determined that the issues should be addressed by the sales administration team which was what the Claimant was requesting. He subsequently confirmed the same in an email on the 12 December 2021. Mr Burman was apparently updated on this when he returned from holiday.

42. The Claimant said in her evidence that she remained unhappy and that this intervention ultimately made no difference. However, we note that in her appeal and even in her claim form to this Tribunal, the Claimant stated that she was happy at work after meeting Mr Gill and so we prefer the more contemporaneous evidence in that regard. Her complaints had been listened to, promptly addressed and resolved to her satisfaction, contrary to her claims before us.
43. We heard that, on 12 December 2021, the Respondent was a victim of a cyber-attack, such that employees were told not to attend the office the following day. The systems seemed to be back up and running on or around the 15<sup>th</sup> of December.
44. On 20 December 2021, the Claimant called in sick with food poisoning, alleging that this was caused by food provided at work, albeit with no corroboration. She then returned to work on the 21<sup>st</sup> and 22<sup>nd</sup> of December.
45. On 23 December 2021, she did not arrive at work or contact either Mr Burman or HR in the morning.
46. Mr Burman attempted to contact her during the course of the morning and said that he became concerned about the Claimant's welfare, such that he contacted HR and they then endeavoured to contact her and, ultimately, contacted her next of kin, who stated that they had not spoken to the Claimant for some time.
47. It was not until the afternoon that Mr Burman was informed by a colleague that the Claimant had been in touch, and she then sent him a text message initially claiming to have sent one earlier in the day, albeit it turned out that was not the case.
48. The text claimed that she was suffering from sickness and went on to state that she would not be in work until the 28<sup>th</sup> of December. Mr Burman acknowledged the message and said that the absence would be discussed upon her return.
49. On 29 December 2021, Louise Swindale from the Respondent's HR department conducted the Claimant's return to work interview and documented it. There was no evidence that her previous absences had resulted in such a process, or at least if they did, they were not documented.

50. At the return-to-work interview, contrary to what she had earlier stated to Mr Burman in her text, the Claimant said that she'd not followed the sickness reporting process because she claimed she believed she had pre-booked holiday on the 23<sup>rd</sup> of December. If that were true, it would not explain why she initially claimed to have sent a text reporting her sickness absence.
51. She also said that she had been unwell for the remaining three days, being the 24<sup>th</sup>, 27<sup>th</sup> and 28<sup>th</sup> of December, and a return-to-work interview form was completed. The reason for absence was stated to be sickness and diarrhoea. The Claimant had not visited her doctor and, apparently, felt better after appropriate bed rest.
52. We heard that after the return-to-work interview, Louise Swindale and the Claimant had what was referred to as a "heart-to-heart", both parties having experienced similar personal issues. Nonetheless, Louise Swindale was clear that there was still no mention of any alleged underlying health problems on the part of the Claimant. Ms Swindale offered to be available to the Claimant if she ever wanted to have a chat.
53. The Claimant was off on 3 January 2022, which was the new year bank holiday but, because the Respondent was a 364 days a year business, that should apparently have been booked as annual leave although the Claimant said there may have been problems with the systems arising out of the cyber-attack.
54. On 11 January 2022, the Claimant again sent a text message to Mr Burman early in the morning. This was despite having been reminded of the Respondent's procedures by Louise Swindale at the return-to-work meeting. She stated that she needed to take that day as annual leave.
55. Mr Burman responded saying she was not following the appropriate process but could take emergency unpaid family leave if she needed it.
56. The Claimant stated that the reason was to sort some personal things out, although before us she said that it was because she had heard rumours that she was about to be dismissed and that it had affected her health, albeit there was no other evidence to support that, and she returned to work on 12 January 2022.
57. On 13 January 2022, during her probationary review meeting, Mr Burman discussed the Claimant's absences and the fact that many of them had been at short notice and without following procedure. At least 5 within the last 2 months had been at short notice.
58. As a result of that meeting, Mr Burman decided to terminate the Claimant's employment, and did so, subsequently confirming his decision in writing.
59. Mr Burman acknowledged that he had discussed the fact that he was considering dismissing the Claimant with both Mr Hughes and Mr Gill prior

to that meeting, but all three confirmed that it was Mr Berman's decision alone. The Claimant alleged however that there was some kind of conspiracy or that, at least, it was in some way related to the complaint that she had raised with HR on the 7 December 2021.

60. The outcome letter confirmed that the reason for dismissal was the Claimant's absences and, specifically, her inability to attend work at short notice, short notice requests for holiday and references were made to the appropriate policies again.
61. It appears that it was only on 13 January 2022, after her dismissal, that the Claimant contacted her GP, seemingly for the first time in relation to her alleged anxiety during her employment with the Respondent. Her GP confirmed that the first contact was in January of 2022, albeit there had been references to her anxiety in periods prior to her employment by the Respondent.
62. On 14 January 2022, the Claimant submitted her appeal. That document included a timeline which was subsequently reproduced in her claim form and in her witness statement before us, although the narrative contained therein was amended over time.
63. The appeal was to be heard by Mr Bisht, the Respondent's operations director, and it was held on the 27 January 2022. He said he had spoken to a number of relevant witnesses prior to that, although there was no documentary evidence of any such investigation.
64. The Claimant had claimed that she was unaware as to why her employment had been terminated, that her absences were due to work related stress, and that she believed that the absences had been used as an excuse to terminate her employment because of her complaint.
65. At that stage she still only referenced the fact that the complaint was about the sales administration and invoices issues, as opposed to any of the matters she was suggesting before us.
66. That said, the timeline did reference her mental health and an allegation that Mr Burman had affected it. It also mentioned the email of 2 December 2021 and was the first mention in the documentation of alleged discrimination. However, even that word appeared to be used in reference to the Claimant's that she had been treated less favourably than those in the sales administration team, who she viewed, perhaps validly, as being more responsible for the problems than herself.
67. Mr Bisht's evidence to the Tribunal was unconvincing. There was no evidence of an appropriate investigation or appropriate consideration of the evidence, for example the 2 December email.
68. He said that he simply wanted to hear from the Claimant regarding why she had appealed against the decision to dismiss. He also said that at the



end of the meeting he had told the Claimant to sign the notes prepared which she did, signing each page. She, however, claimed that she didn't or couldn't read them and felt she had no option but to sign.

69. We found the notes to be legible.

70. The Claimant was informed in writing that her appeal was not upheld and Mr Bisht, before us, seemed to say that it was because of the absence levels as opposed to the nature of the short-term absences, a different reason to that originally given. Nonetheless, he concluded that the Claimant's mental health issues were solely related to her personal circumstances and upheld the original decision to dismiss.

71. Those are the principal facts as we have found them.

#### Issues and law

72. The only claims before us were of alleged failures to make reasonable adjustments and detriments as result of having made an alleged protected act (victimisation under s 27 Equality Act 2010).

73. The alleged protected act was the claimant's oral discussions with Mr Hughes on 7 December 2021 and her follow up email (singular). It was said that these discussions included allegations of discrimination and were the reason for the Claimant's subsequent dismissal.

74. Section 20(3) Equality Act 2010 provides that where a provision, criterion or practice (PCP) puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, there is a requirement on an employer to take such steps as is reasonable to avoid that disadvantage.

75. In *Environment Agency v Rowan* [2008] IRLR 20, the EAT gave guidance on how we should approach this issue by identifying:-

- a. the provision, criterion or practice;
- b. the non-disabled comparators if appropriate;
- c. the nature and extent of the substantial disadvantage.

76. We also considered paragraph 6.28 of the Employment Code of Practice and specifically:-

- a. The effectiveness of the particular adjustment
- b. Its practicability
- c. The costs, not merely financial
- d. The Respondent's type, size and resources
- e. The availability of other or external assistance

77. We had to consider the extent to which the adjustments proposed, or indeed any other adjustments, may have reduced or removed any disadvantage.
78. We reminded ourselves that the test is objective. An adjustment will not be reasonable if it has “no prospect” of removing the disadvantage, but “a prospect” is sufficient.
79. It is settled law that there is no distinct duty to consult on adjustments.
80. We considered the burden of proof in relation to all allegations and s136 Equality Act 2010 and whether there were facts from which we could conclude that an adjustment was reasonable and could reduce the disadvantage or a detriment was because of a protected act.
81. The burden would then shift to the Respondent to show that the adjustment would not be effective or would not, in any event, be reasonable or that there was no detriment because of a protected act.
82. The Claimant also sought, after the preliminary hearing in this matter, to amend her claim to include a suggestion that her existing workload put her at a disadvantage due to her anxiety and that a reasonable adjustment would have been to offer her flexible working. We agreed to consider that application having heard the evidence.

#### Decision

83. We considered that there were significant inconsistencies in the evidence of the Claimant and material changes in her narrative over time. There were also the concerns we’ve already highlighted regarding the Respondent’s evidence, particularly of Mr Berman and Mr Bisht.
84. We have also considered a number of issues on the part of the Respondent which fell short of best practice. For example,
  - a. the apparent inadequate or no training on the EDI system,
  - b. the failure to conduct return to work interviews by Mr Burman prior to the one conducted on his behalf at the end of December 2021,
  - c. the Respondent’s policy that seemingly allowed staff to use up their holiday entitlement when sick, which would appear to not comply with the Working Time Regulations or European Law and they may wish to review that in any event.
  - d. the potential lack of clarity regarding the sickness reporting policy in terms of the contents of the contract and the handbook which the Claimant initially, at least, misunderstood prior to it being clarified to her, and also
  - e. the failing of Mr Burman to pick up on the concerns raised by the Claimant in her email of the 2 December 2021, albeit it was shortly before his annual leave and

- f. the seeming partial reliance on some of the Claimant's legitimate absences.
85. We've also considered the significant failings that we consider took place in the appeal process. For all of those matters we considered the extent to which we should draw adverse inferences in the context of the discrimination claims but, for the reasons given below, the claimant's case could still not be made out.
86. It had already been determined that the Claimant met the definition of disability with regard to both her anxiety and migraines.
87. The Respondent acknowledged that they were aware of the Claimant's migraines by virtue of the medical questionnaire, but migraines did not seem to feature thereafter. Whilst in her evidence before us, the Claimant suggested that she was having significant difficulties with migraines from the middle of November, there was no contemporaneous evidence to support that, nor to suggest that she made the Respondent aware.
88. The principal issue, therefore, centred around the anxiety condition and it was the Respondent's position that at no stage did the Claimant make them aware of this condition.
89. We note that neither of the Claimant's conditions were ever expressly referenced by the Claimant in writing after the medical questionnaire. It seems unlikely that they would have been referenced orally and not confirmed at some stage in writing, particularly as the Claimant's evidence was that she was putting everything in writing to ensure that there could be no misunderstanding.
90. It also seems likely that the Claimant completed the onboarding medical questionnaire as it appears in the bundle. Even if we are wrong on that, we accept that the version we have is what the Respondent received, and so they would not have been on notice of an anxiety condition at that stage.
91. The next stage at which it was suggested that the Respondent may have become aware was on 16 November 2021 by virtue of the Claimant's reference to not having slept. However, in the context of her discussions with Mr Burman that was related to custody issues surrounding her son. We consider that a mere lack of sleep, whilst it could be related to an underlying medical condition, would not have flagged that to the Respondent. Anyone in those personal circumstances may well have struggled to sleep, whether or not there was an underlying condition.
92. It was not unreasonable for the Respondent to have viewed the Claimant's lack of sleep in that context and they were not, therefore, aware of any underlying mental health issue.
93. The next point at which we have to consider knowledge is from the Claimant's email of 2 December 2021 sent to Mr Burman, who was aware

of the Claimant's personal issues and their effect. Again we consider that even that email, in context, referred to the emotional effects on the Claimant of her personal circumstances. Without more, the disclosures in that email could reasonably be considered to have been no more than a normal stress reaction to those circumstances and would be insufficient to give notice or constructive knowledge of an underlying disability.

94. That's not to say that the Respondent should not have followed up that email which we clearly consider that they should.
95. The Claimant was forthright and, at times, combative, including before us.
96. We consider that it is highly unlikely that the Claimant would have expressly raised her anxiety orally but not in writing. There was no evidence that she did so.
97. Moreover, if she was suffering from the effects of anxiety it seemed to us likely that she would have been in contact with her doctor sooner.
98. For all those reasons we're satisfied the Respondent did not have actual or constructive knowledge of any disability beyond the migraines, and the migraines had no relevance to the issues in this case.
99. As a result, the reasonable adjustments claim must fail.
100. Nonetheless, we have considered the provision, criteria or practice (PCP) relied on. It was suggested that the Respondent had a practice of requiring employees to take on additional work, and, in this case, giving the Claimant sales administration work to do beyond her normal contracted duties.
101. We don't accept that this was a provision, criteria or practice put in place. Whilst the Respondent did ask the Claimant to take on some duties on one or more occasions, those appeared to be reasonable requests.
102. Moreover, the Claimant refused, and nothing was done to enforce that request even though it may well have been reasonable to do so. Indeed, it appeared to be common ground, as demonstrated by the Claimant's texts and emails, that, when asked to do additional tasks, she could either leave her existing tasks or someone else would pick them up. As a result, there was no evidence that it would in fact have given rise to additional workload.
103. That is not to say that we don't accept that the problems in sales admin may well have created some additional work, but that was not how the PCP was put in the claim, and so we don't accept that the provision criteria or practice was made out. Nor was there any evidence that any such provision would have put the Claimant at a particular disadvantage due to her alleged disabilities, even if they had been known by the Respondent, albeit such an outcome was conceivable.

104. Furthermore, once the Claimant raised her concerns about workload with HR on the 7 December 2021, within 2 days Mr Gill had responded to her request not to be involved in the sales admin tasks and her contemporaneous evidence said she was happy with the outcome. As a result, to the extent that a reasonable adjustment was required, it appears it was made promptly and was satisfactory.
105. Again, for all those reasons, the reasonable adjustment claim must fail.
106. For similar reasons, the Claimant's request to amend her claim to include a reasonable adjustment of flexible working based on her existing workload would also fail, even if we were to have allowed such an amendment.
107. The Respondent did not have knowledge of the disability. There was no evidence there was ever a request for flexible work, which, in any event, before us the Claimant had only suggested related to a late start and shorter lunch break. That was not something that was ever put to the Respondent's witnesses. The contemporaneous evidence suggested that the Claimant was happy with her work both initially and after Mr Gill's intervention.
108. That was a claim that was destined to fail. It was weak, it was produced late, only after the preliminary hearing in this matter, and there would have been potential prejudice to the Respondent of allowing it to proceed. The fact that it had never been mentioned before meant that it lacked credibility, and so for all of those reasons it wouldn't be just and equitable to have allowed the amendment.
109. We then considered the claim of victimisation.
110. The protected act was said to have been the discussion with Mr Hughes and the subsequent email on the same date, 7 December 2021.
111. We are satisfied that the email produced in the bundle before us summarised the discussion that the Claimant had with Mr Hughes and that it went no further.
112. As a result, the suggestion that the Claimant had referenced her mental health or disability or anxiety or anything related to the Equality Act was not made out. There was no reference to any of those in her email and there was no reference in the contemporaneous documents, the appeal or the claim form that the email to Mr Burman of 2 December 2021 had been forwarded to Mr Hughes.
113. There was no evidence that it had been, and we don't accept that it was. In any event that wasn't the protected act relied on. Even if it had been, it may not have amounted to a protected act. It was not perceived as

such by Mr Burman, who gave it little or no consideration. As a result, it could not have been the reason for the Claimant's dismissal.

114. So for all of those reasons, we don't accept that the provisions of Section 27 of the Equality Act in terms of what constitutes a protected act were made out.
115. There was no allegation of discrimination at that stage, merely a complaint about the sales admin team and the workload. That was appropriately dealt with by Mr Hughes, passing the matter to Mr Gill, and Mr Gill apportioning the workloads to the Claimant's satisfaction, so that was the end of that matter.
116. Whilst Mr Burman was made aware of the complaint and the resolution, there was no evidence in any event that this played any material part in the decision to dismiss.
117. It seems to us that, whilst there were a number of errors in the way the Respondent presented the case against the Claimant, there was a significant absence and attendance problem.
118. Principally, there were 5 absences in the 2 months prior to the dismissal, on separate occasions, in each of which the Claimant did not follow the correct procedure.
119. It seems to us that such circumstances would have led many employers to dismiss an employee during their probation period and we accept that was the principal reason for dismissal, notwithstanding the references to other absences.
120. There was no evidence of any link between the decision to dismiss and the complaint to HR, so the victimisation complaint must also fail, notwithstanding the subsequent failings in the appeal process.
121. For all of those reasons, the Claimant's claims fail and are dismissed.

Employment Judge Broughton

Date: 5 April 2024