EMPLOYMENT TRIBUNALS

Claimant:	Mr L Neagoe
Respondent:	Crystal Electronics Limited (1) Mr. Dean Port (2)
Heard at:	Cambridge Employment Tribunal (in person)
On:	8, 9, 10, 11 April 2024 (4 days) Deliberation 12 April 2024
Before:	Employment Judge Hutchings Tribunal Member A Hayes Tribunal Member K Omer

Representation

Claimant:	in person
Respondent:	Mr M. Nadin, solicitor

RESERVED JUDGMENT

1. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed by the first respondent.

2. The complaint of harassment related to the claimant's disability is well-founded and succeeds.

3. The complaint of direct discrimination related to the claimant's disability is not well-founded and is dismissed.

4. The complaint of unfavourable treatment because of something arising in consequence of disability is not well-founded and is dismissed.

5. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant, Mr Neagoe, was employed by the first respondent, Crystal Electronics Limited as a Production Director, from 1 October 2018 until he was dismissed on 18 February 2022. By an ET1 claim form and Particulars of Claim dated 5 May 2022 he claims that his dismissal was unfair and he was dismissed because of his disability. Mr Neagoe also alleges the respondents did not follow a fair process. Early conciliation started on 12 April 2022 and ACAS issued a certificate was issued on 14 April 2022.

2. The first respondent, Crystal Electronics Limited (‘the company”) is an electrical engineering company. The second respondent, Mr Dean Port, is a director, CEO and the majority shareholder in the company. By an ET3 response form, and Grounds of Resistance, dated 20 June 2022 the respondents contest the claim. They contend that Mr Neagoe was dismissed for misconduct and that a fair process was followed. The respondents deny they discriminated against the claimant.

3. At a preliminary hearing on 23 January 2023 Employment Judge Palmer found that Mr Neagoe was a disabled person for the purpose of section 6 of the Equality Act 2010 at the relevant time by reason of anxiety and depression. The respondents state they did not know the claimant was suffering from depression and/or anxiety at the relevant times.

Procedure, documents, and evidence

4. Mr Neagoe represented himself and gave sworn evidence.

5. The respondents were represented by Mr Nadim, who called sworn evidence on behalf of the respondent from:

   5.1. Dean Port, owner and director;
   5.2. Stacey Howell, managing director;
   5.3. Jack Parsler, development director; and
   5.4. Georgia Webster, project manager.

6. We considered documents from an agreed 480-page hearing file which the parties introduced in evidence, and the additional evidence (requested by the Tribunal) recorded in this judgment. We had the benefit of an agreed chronology and cast list. The hearing was listed for 5 days, during which we heard evidence on liability only. Mr Nadin and Mr Neagoe made closing statements.

7. Mindful of Mr Neagoe’s disability and comments made by Mr Port at the start of the hearing about his ability to recall events generally and the fact he wore a hearing aid (matters not disclosed to the Tribunal until the start of Mr Port’s evidence, and for which he confirmed at that time he did not need any reasonable adjustments), from the outset we took regular breaks (5 – 15 minutes in each hour). We made the parties aware that should they need additional breaks they must make a request at any time. Mindful Mr Neagoe

was representing himself, and he has a disability of depression and anxiety, the hearing concluded no later than 4pm each day to ensure he had preparation time at the end of the day. Before closing the hearing each day, we explained to Mr Neagoe what would happen at the hearing the following day and ensured he (and Mr Nadin) had the opportunity to ask any questions about the process and timetable.

8. Following a case management hearing which Mr Neagoe and Mr Nadin attended, a case management order dated 17 August 2023 recorded the issues in dispute for the following claims:

    8.1. Unfair dismissal (s98(1) and (2) Employment Rights Act 1996 ("ERA");
    8.2. Harassment related to disability (s26 Equality Act 2010 ("EqA"));
    8.3. Direct disability discrimination (s13 EqA);
    8.4. Discrimination arising from disability (s15 EqA); and
    8.5. Failure to make reasonable adjustments (ss20-22 EqA); and

9. We discussed the list of issues (below) with the parties at the start of the hearing and parties confirmed the list was accurate. Accordingly, the Tribunal considered the issues as listed.

10. At the end of the hearing on 11 April 2024 we considered whether there was time to deliberate and give an oral judgment. Given the number of factual issues we concluded we needed a day for deliberations. Mindful of the claimant's depression, anxiety, and the fact English is not his first language (he had previously confirmed he did not require an interpreter) and that Mr Port informed us he has a hearing impairment, we considered it fair in all the circumstances to issue a written decision. We explained the process of a written judgment to the parties at the end of the hearing.

Issues for the Tribunal to decide

11. We set out below the issues we must determine, confirmed in the case management order of Employment Judge M Warren dated 17 August 2023 which we discussed, and agreed, with the parties at the beginning of the hearing, mindful that the claimant is not represented.

Unfair dismissal

12. It is agreed that the company terminated Mr Neagoe's employment on 18 February 2022. We must decide:

    12.1. What was the reason or principal reason for dismissal? The claimant says the reason for dismissal was discriminatory, because of his Anxiety and depression. The respondent says the reason was conduct, specifically allegations that Mr Neagoe bullied his colleagues. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

    12.2. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

        12.2.1. there were reasonable grounds for that belief;

12.2.2. at the time the belief was formed the respondent had carried out a reasonable investigation;
12.2.3. the respondent otherwise acted in a procedurally fair manner;
12.2.4. dismissal was within the range of reasonable responses.

13. Mr Neagoe says that his dismissal was unfair for the following reasons:

13.1. Statements were produced to him on the same day as and after, the Disciplinary Hearing;
13.2. The Respondent fabricated evidence;
13.3. The Respondent coerced its employees to give evidence against him, namely Daniel Addis, Georgia Webster, Rachel Lyons, Sophie White, Zoe Croxford and Jack Parsler;
13.4. The Respondent did not grant his reasonable request to be provided with more time for preparation and for the Hearing to be held in a neutral location away from the Respondent's premises;
13.5. The Respondent did not comply with the ACAS Code of Practice by meeting with and taking a statement from Mr Neagoe prior to the Disciplinary Meeting and by Mr Dean Port being involved in every stage of the process;
13.6. The decision to dismiss was pre-determined;
13.7. The sanction of dismissal does not reflect a fair and proportionate decision;
13.8. The Respondent failed to take into account Mr Neagoe's length of service and clear disciplinary record; and
13.9. At the Appeal Hearing, the Appeal Chair Stacey Howell ignored new evidence provided by Mr Neagoe and failed to provide him with minutes of the Appeal Hearing after it was concluded.

Time limits for disability claim

14. We must decide if Mr Neagoe brought his claim within the time limits set by law (section 123 of the Equality Act 2010). The claim form was presented on 5 May 2022. Accordingly, and bearing in mind the effects of ACAS early conciliation (which commenced on 12 April 2022 and a certificate being issued on 14 April 2022), any act or omission which took place before 3 February 2022

15. is potentially out of time, so that the tribunal may not have jurisdiction. Therefore, the Tribunal must decide:

15.1. Does the claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?
15.2. Was any complaint presented within such other period as the employment tribunal considers just and equitable? If so, the Tribunal may extend the time limit for the claimant to present his claim.

Equality Act 2010" discrimination claims

16. Employment Judge Warren has found that the claimant had a physical impairment of depression and anxiety.

Harassment related to disability: section 26 Equality Act 2010

17. Did the Respondent engage in conduct as follows:

17.1. Failing to provide Mr Neagoe with any support or encouragement during his two months of absence due to illness;
17.2. Taking from Mr Neagoe his company vehicle;
17.3. Deliberately organising a disciplinary meeting immediately after his return to work;
17.4. Failure to take into account Mr Neagoe's medical records in the disciplinary and appeal process;
17.5. Withholding sick pay during Mr Neagoe's absence, whilst it investigated whether he had gone overseas during his absence;
17.6. At a meeting on 22 November 2021, a Back to Work meeting, subjecting Mr Neagoe to questions about his location during his sick leave and Mr Port discussing his mental ill health and reasons for his absence inappropriately in front of other members of staff;
17.7. At a, "Bookings Meeting" on 22 November 2021, Mr Port openly discussing Mr Neagoe's mental health problems and the reasons for his absence inappropriately in front of other members of staff;
17.8. At a meeting in the Boardroom on 21 January 2022, Mr Port using towards Mr Neagoe derogatory language and insults, the details of which Mr Neagoe cannot recall but which includes describing him as "the worst employee ever", as "stupid", ordering that he should leave the room and shouting at him in an aggressive tone;
17.9. At a further meeting on 21 January 2022, described by Mr Neagoe as a, "Door Knockers Meeting" , Mr Port using towards Mr Neagoe derogatory language and insults the full details of which Mr Neagoe cannot recall, but which included telling him that he was not able to do his job properly which was why he was doing Bookings and told him to leave the room in an aggressive manner;
17.10. At a meeting on 26 January 2022, Mr Port shouting at Mr Neagoe, using derogatory language and insults the full details of which he cannot recall, but which included describing Mr Neagoe as, "the worst employee ever", as "stupid", as not deserving of his wage, instructing him to leave his car keys and go, accusing him of not using his brain and instructing him to leave, "Get out. Leave the room"; and
17.11. On 31 January 2022, in the Operations Room, Mr Port using towards Mr Neagoe violent language and behaving aggressively, approaching him, standing close to him, shouting at him "what are you doing here", "go downstairs" and to leave the room.

18. If so, was that conduct unwanted?

19. If so, did it relate to the protected characteristic of disability?

20. If so, did the conduct have the purpose or, (taking into account Mr Neagoe's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect) the effect of violating Mr Neagoe's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Mr Neagoe?

Direct Disability Discrimination section Equality Act 2010

21. Insofar as any of the above listed allegations of harassment are factually upheld but found not to meet the definition of harassment, Mr Neagoe relies upon the same allegations as amounting to direct discrimination.

22. The question for the Tribunal will be whether such events amounted to, "less favourable treatment"? In other words, did the Respondent treat Mr Neagoe less favourably than it treated or would have treated a hypothetical comparator, being a person who is not disabled and who was not in materially different circumstances?

23. If Mr Neagoe was treated less favourably, the Tribunal will then ask whether the reason for that difference in treatment was that he was disabled by reason of anxiety and depression.

Discrimination arising from disability; section 15

24. The unfavourable treatment relied upon is dismissal.

25. Did Mr Neagoe's absence from work arise in consequence of his disability?

26. If so, did the Respondent dismiss Mr Neagoe because of his absence work?

27. If so, has the Respondent shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim?

28. Alternatively, has the Respondent shown that it did not know and could not reasonably have been expected to know, that Mr Neagoe had the disability?

Failure to make Reasonable: section 20 and section 21

29. Did the Respondent not know and could it not reasonably have been expected to know that Mr Neagoe was a disabled person?

30. A "PCP" is a provision, criterion or practice, (a way of doing things). Did the Respondent have the PCP of requiring its Production Director to manage the Engineering Team, the Projects Co-ordinators and the Project Managers Teams?

31. If so, did such PCP put Mr Neagoe at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any material time?

32. If so, did the Respondent know or could it reasonably have been expected to know that Mr Neagoe was likely to be placed at any such disadvantage?

33. If so, were there steps that were not taken that could have been taken by the Respondent to avoid any such disadvantage? Mr Neagoe identifies a reasonable adjustment that the Respondent could and should have taken, removing from him the obligation to manage the Engineering Team, the Project Co-ordinators and the Project Managers Teams.

34. If so, would it have been reasonable for the Respondent to have taken those steps at any relevant time?

Findings of fact

35. The relevant facts are as follows. First, we make a general finding on evidence and the credibility of witnesses.

36. It was clear to us that Mr Neagoe was upset by the events leading to the end of his employment. Often he could not recall events when questioned and at times his evidence contradicted the documentary record, for example receipt of meeting minutes (he alleges he did not receive them; we found he did).

37. Mr Port was keen to assist the Tribunal with his recollection of events. However, on occasion, his recollection did not align with the documentary evidence before the Tribunal. For example, in his witness statement he recalls that from August 2021 when Mr Neagoe allegedly requested a loan (no finding is made regarding the loan as it is not one of the issues in dispute), his attitude towards Mr Port "changed dramatically, he became rude and distant". Mr Port's recollection is not credible. WhatsApp messages in December 2021 and January 2022 record a good friendship, with warm greetings and kisses being exchanged. Mr Port told us that he informed Mr Neagoe about the investigations at a meeting on 17 January 2022. There are no minutes of this meeting and we have found that this meeting did not take place.

38. Ms Howell, Mr Parsler and Ms Webster were also keen to help the Tribunal. However, their direct experience of many of the events about which Mr Neagoe complains is limited. Ms Howell was on maternity leave and her factual evidence is limited to her role in the appeal process. Mr Parsler and Ms Webster made general statements about Mr Port's conduct, but could not recall specifically the events in dispute. Indeed, they were keen to assist (and their recollections quite clear they said) with what Mr Port had not said, particularly regarding Mr Neagoe's mental health, but were limited in their recollections of what Mr Port had said in meetings.

39. In making this observation, we have borne in mind the period of time which has passed since many of the events occurred; some discrepancies may be attributable to this. Generally, when the recollections of the witnesses did not align with the documentary evidence, we have preferred the latter, when we have found the documents to be credible.

40. We turn now to our findings of fact relevant to the issues in dispute.

41. Mr Neagoe was initially employed part time as a bookings assistant, subsequently becoming full time around February 2019; in November 2021 he was appointed a director.

42. The events in issue start on 24 September 2021 when a sick note seen by this Tribunal confirms that Mr Neagoe was signed off sick by his GP for 4 weeks with "stress at work". On 20 October 2021 the GP issues a second sick note ("stress at work"), signing Mr Neagoe off for a further 4 weeks from 24 October 2021. However, Mr Neagoe did not email the second sick note to the company until 1 November 2021. Mr Neagoe says that while he was off sick he was not contacted by the company or any colleagues. We agree. We find Mr Port's

explanation that as the sick notes identified “stress at work” the company did not consider it appropriate to contact Mr Neagoe compassionate and credible.

43. On 1 November 2021 Mr Neagoe also emails Rachel Lines (using the company’s accounts email address) to find out why he had not received a SSP payment for October 2021. He is told this is because “we had not heard from you and your last sick note ended on 25 October 2021.” This is correct. On 4 November the company provides more information about why Mr Neagoe has not received his SSP payment. Belinda Molver says that the company had “not heard from you during your last month of work”. While factually correct we find this cannot be a reason for non-payment of SSP as Mr Neagoe had a sick note for 4 weeks from 24 September, so the period of non-communication we find is 22 October to 1 November 2021. We disagree with Ms Molver’s statement that it “is reasonable for [the company] to think you had possibly left the business”. This suggestion is without factual or evidential basis (the respondent has not explained its reasoning for making this statement) and premature at best. Mr Neagoe had been signed off sick. There is no indication he was intending to leave the company. This statement is made to someone who has been off with “stress at work” and had an unaccounted gap of 5 working days. We find Ms Molver’s explanation was not an accurate reason for the delay in paying the SSP.

44. The company’s position at this time is contradictory. On the one hand Mr Port says that the company did not contact Mr Neagoe in this time as he was off sick with stress at work, and it was inappropriate to do so. On the other hand it was suggested in questioning by Mr Nadin that someone contacted him and got an international dialling tone. The respondents have not brought evidence as to who, or testimony from the person they allege did so. As we have accepted Mr Port’s evidence that no contact was made with the Mr Neagoe during this time, we find that, while Mr Neagoe himself acknowledged he took a trip overseas during his sick leave, the company did not have knowledge of this. We find the delay in paying SSP is not explained by Mr Neagoe’s trip overseas.

45. Both Ms Lines and Ms Molver reference reasons for Mr Neagoe’s absence, Ms Lines expresses regret that Mr Neagoe “is still not feeling well and are depressed” and Ms Molver regret that Mr Neagoe is “still suffering from depression”. We have considered the language used in the context of the friendly and supportive working environment described by all the company’s witnesses, the description Mr Port’s friendship with Mr Neagoe, the fact Ms Molver was Mr Port’s PA, the social events attended, the warm text messages and voice calls exchanged as late as January 2022 between Mr Port and Mr Neagoe. In this context, on the balance of probabilities, we find it implausible that the first and second respondents did not know that Mr Neagoe was suffering with anxiety and depression.

46. The relationship with Mr Neagoe which Mr Port describes in his witness evidence and his oral evidence is simply not credible. In the context of all the documentary evidence, we find that they were speaking at this time; indeed, they remained on friendly terms as the WhatsApp messages evidence. It is curious that, when asked whether they knew Mr Neagoe was suffering with anxiety and depression, all the respondent’s witnesses were at pains to tell us what they were not told (they were not told about Mr Neagoe’s mental health, the words he uses in his claim), rather than offering details of conversations of

which, when probed, they could not recall details. Indeed, in evidence Mr Port told us that he ensured Ms Webster and Ms Andersen (another director with whom the claimant accepted he had a close friendship) remained in contact with Mr Neagoe. It cannot be both. Either there was no contact or contact was encouraged. Ms Webster told us she only met up with the claimant once (in Tesco) and did not reference any other communications when asked by the Tribunal.

47. For these reasons, we prefer Mr Neagoe's recollection that he shared that he experienced depression and anxiety with Mr Port (who we have found he remained on friendly terms with until early January 2021) and Ms Webster (who acknowledged she remained on friendly terms with Mr Neagoe until he left), both of whom acknowledged they discussed personal matters (sleep and weight respectively) with Mr Neagoe.

48. Further, Mr Port described his close working and friendly relationships with his colleagues. On balance, we find it inconceivable that Ms Molver would reference depression in an email which deals with matters (concerns about the company thinking Mr Neagoe has left, payment of SSP) which in the normal course of business would require oversight of the CEO, Mr Port, without having discussed that she knew Mr Neagoe was "suffering from depression". His suggestion he had no idea until the ACAS made contact with him in these proceedings (12 April 2023) is implausible.

49. In this context, and given Mr Port's inaccurate recollection of his relationship with Mr Neagoe at this time, we find that it is more likely than not that both knew about Mr Neagoe's depression and anxiety, as did the company (Ms Molver and Ms Lines) from around October 2021.

<u>Tesla</u>

50. At some point after his appointment Mr Neagoe acquired use of a Tesla car owned by the company. Mr Port told us that the use of the Tesla car was a loan. He told us he made it clear to Mr Neagoe at the time he started using the Tesla that it was a loan. He has not provided any details of this conversation in his witness statement, nor was he able to do so at the hearing. He also relies on the previous use by Mr Neagoe of a Ford Focus he had brought for his son as justification that the Tesla was a loan, suggesting that when this car was sold as the son was not interested in it, the "loan" of the son's Ford focus was replaced by the Tesla.

51. Mr Port's explanation is simply not credible. First, use and arrangements for the Ford focus are not issues in dispute. Mr Neagoe complains about the removal of the Tesla. Second, by Mr Port's own admission he owned the Ford focus personally, while the Tesla was leased by the company.

52. When asked who paid the technical and serving costs and insurance for the Tesla, Mr Port replied each time that he "assumed" it was the company. Yet, he was at pains to emphasise he was CEO, majority shareholder and that the company is a small business. It is not feasible he does not know. Mr Neagoe had a fuel card for the Tesla. Mr Neagoe's tax assessment for the tax year April 2021 to April 2022 records a "car benefit". For this to be the case it would need to be a car leased by the company. Therefore we conclude that HMRC's reference to a car benefit is a reference to the white Tesla.

53. Mr Neagoe complains that during his 2 month period of sickness absence the company removes a white Tesla car from outside his home. They did. We find they did so to install a tracker, returning it to Mr Neagoe a few weeks later once they had established his whereabouts while on sick leave.

54. In the documentary evidence the first time Mr Port refers to use of the Tesla being a loan is 22 November 2022 at the meeting which took place on his first day back at work following his 2 months of sick leave. In oral evidence Mr Port sought to explain how other employees had the use of a company Tesla car as a company car while he considered the use by Mr Neagoe a loan on the basis that the other employees had to visit clients. While that may be the case (and was confirmed by Ms Howell, Mr Parsler and Ms Webster) this explains why these employees had company Tesla's as a benefit, not why the use of the Tesla by Mr Neagoe was a loan.

55. To summarise, Mr Port cannot provide any details of the conversation in which he initially told Mr Neagoe the car was a loan, the company finances the car's costs (insurance, fuel), the first reference by Mr Port to the car being a loan is November 2021 and HMRC recorded use of the car by Mr Neagoe as a benefit. we find that the Tesla used by Mr Neagoe was a company car. For these reasons, we find that Mr Port did not expressly tell Mr Neagoe the Tesla was a loan at the time he was given the keys, as he now suggests;

<u>22 November 2021 meeting</u>

56. Mr Neagoe returned to work on 22 November 2021. He complains that he did not have a "return to work meeting". The respondents contend he did, the meeting they referred to as a "welfare meeting" which took place that day. We have seen notes of that meeting taken by Ms Webster and Ms Molver. Both sets of notes title the meeting as a "welfare meeting".

57. The company may have had the best intentions to conduct a meeting about the Mr Neagoe's welfare, exploring the reasons for his absence and any support the company could put in place to facilitate his return to work after an absence of 2 months. However, by its own admission at this hearing, however well intended the meeting, the company did not follow its own guidance. Having considered both sets of notes, which align, and for this reason we dismiss Mr Neagoe's suggestion they are manipulated, we find that Mr Port did not conduct a supportive meeting, following company guidance, of an employee who had been signed off work for 2 months for stress at work.

58. At the very least the company should have considered using its own return to work interview document. While not mandatory by reference to its own policies, it begs the question why an employer would have this documentation and not complete it for an employee who had been absent on sick leave for 2 months. The questions asked by Mr Port at this meeting do not reflect the questions in those forms. Mr Neagoe is not given the opportunity to explain why he believes he is now fit to return to work. Mr Port focuses on needing to address what at work resulted in Mr Neagoe's 2 months of absence.

59. Having read both sets of notes, with particular reference to Ms Webster's notes which record the exchange of questions and answers between Mr Port and Mr Neagoe, we find the meeting interrogatory on the part of the employer. Several

times Mr Port says he "needs to know" what at work made Mr Neagoe unwell. Early in the meeting Mr Port suggests that Mr Neagoe "said to another director that you are being treated unfairly" and states that he "wants to know what is making [Mr Neagoe] unwell. Later in the meeting, Mr Port asks: "anything you need from us [the company] to make you well" and goes on to reference concerns raised by Mr Neagoe about shouting and swearing. At this point Mr Neagoe states that the meeting doesn't "feel like a welfare meeting". We agree. By his own words in that meeting Mr Port's focus is the "need to address the issues", rather than identifying, constructively, what the company can do to support Mr Neagoe's return to work. The witness recollections of the meeting are misguided. Ms Webster told us Mr Neagoe confirmed he was happy to have the meeting. This is not recorded in her notes.

60. The meeting may be labelled in the notes as a welfare meeting. However the substance of the discussion focuses on what the company has done to cause the absence and not Mr Neagoe's welfare and what the company can do to support his return. For these reasons we find the meeting was not a welfare meeting, however labelled and the company did not conduct a return to work meeting in line with the guidance in its own policy and documents or at all.

61. Indeed, Mr Neagoe was given limited notice of the meeting; he was told to attend on the day he returned and not given the documents the company's policy suggests an employee in his situation should be given to complete in advance of the meeting. We find this meeting was sprung on Mr Neagoe on the day he returned to enable Mr Port to find out what at work had caused Mr Neagoe's absence. This was the focus of the meeting, not Mr Neagoe's welfare. he manner of the meeting is an interrogation not a welfare meeting. There was no return to work meeting in November 2021 or at all.

<u>22 November 2021 Bookings meeting</u>

62. Mr Neagoe attended a second meeting on 22 November with several employees to discuss strategies for booking engineer visits to clients (the "bookings meeting"). At this meeting, Mr Neagoe alleges Mr Port discussed his medical conditions and the reasons for absence. Mr Port does not address what happening in this meeting in his witness statement.

63. At the hearing Mr Port was asked by Mr Neagoe whether he discussed his absence from work. He told us he "[didn't] recall but if [he] did it would have been in a welfare capacity." He denied called Mr Neagoe names. It is curious that Mr Port does not specifically address the meeting in his witness statement, initially tells the Tribunal that he cannot recall discussions about mental health but vehemently denied name calling. His evidence about this meeting lacks credibility. Either he recalls the meeting or he does not. For this reason, and in the context of the earlier meeting which we have found was not welfare focused, we prefer Mr Neagoe's recollection of this meeting.

64. There are no minutes of this meeting. Mr Parsler gave evidence about this meeting; he told us he was sure that Mr Port did not mention Mr Neagoe's "mental health", but could not comment further on what Mr Port did say at this meeting.

65. Given we have found that Mr Port's did know at this time that Mr Neagoe had depression and anxiety and our finding about the nature and tone of the

"welfare meeting", we prefer the claimant's recollection (in the absence of any details from Mr Port) that Mr Port did reference Mr Neagoe's absence and the reasons for it at this meeting in front of other staff.

66. We heard evidence about email exchanges between Mr Port and Mr Neagoe in December 2021 and a meeting to discuss Mr Neagoe's duties and role at this time. These events are not matters raised by the claimant in the list of issues. Accordingly, the Tribunal does not need to making findings about these events.

67. Mr Neagoe has a further period of sickness leave from 7 to 17 January 2022 due to Covid-19. His first day back at work is Monday 17 January 2022.

<u>17 January 2022 meeting</u>

68. The respondents says that on 17 January 2022 2 employees (Sophie White and Daniel Addis) raise complaints about Mr Neagoe. Mr Port had a meeting with these employees. This is the Monday. Following that meeting, at his request, both provide written statements of their concerns by email on 21 January 2022. We have read the minutes of that meeting and the email statements. Ms White and Mr Addis have not provided evidence to this Tribunal.

69. Ms White's email refers to an alleged incident on the day Mr Neagoe returned to work (17 January), saying she was "ignored" by Mr Neagoe, that he didn't "deal with the situation very well…was very rude, belittling….". Mr Addis' email refers to an incident "on Tuesday", the day after Mr Neagoe returned to the office, alleging Mr Neagoe was "very rude" with Mr Neagoe allegedly saying Mr Addis was "not doing any work and just creating problems". The Tuesday must be the day after the meeting with Mr Port on the Monday (Tuesday 18 January). It cannot be the Tuesday of the preceding week as Mr Neagoe was off sick from 7 to 17 January.

70. Therefore, we find that the respondents' recollection of the complaints by Ms White and Mr Addis is inaccurate. In the meeting on 17 January (Monday) Mr Port says Mr Addis refers to an incident when he says Mr Neagoe was "very rude". This is repeated in his email of 21 January when he says the incident being complained about is the Tuesday. The allegations against Mr Neagoe lack accuracy and are implausible. Indeed, this discrepancy calls into question the accuracy of the 17 January meeting notes. It cannot be the case that Mr Addis complained on the Monday about events he says in writing took place on the Tuesday, which must be the day after given Mr Neagoe was absent the previous Tuesday. In any event, to have a meeting to address complaints about an employee on the day he returned from sick leave, relating to events that same day is hasty at best.

71. The respondents refer to the 17 January meeting as an "investigation meeting". At this meeting Ms White and Mr Addis explain in outline their complaint. However, there is no investigation process following this meeting. The allegations were not put to Mr Neagoe before he received the invitation to the disciplinary meeting. There was no investigation meeting; there was no attempt by the respondents to hear Mr Neagoe's side of the story.

72. The respondents say they held an investigation meeting with Mr Neagoe on 17 January. There are no minutes of a meeting with him. Given we have found some of the allegations relate to the following day, we must find there was no meeting with Mr Neagoe on this day which put to him in full the allegations alleged by the respondents 21 January and 5 February invitations to disciplinary meetings.

21 January 2022: second disciplinary meeting invitation

73. The email statements from Ms White and Mr Addis are received by the second respondent at 11.38 and 16.11 respectively on 21 January. The same day the first respondent sent a letter to Mr Neagoe inviting him to a disciplinary hearing. We find, on balance, that this letter was written before receipt by the second respondent of Mr Addis' written statement. The chronology evidences a complete failure by the respondents to conduct a fair investigation into the allegations made by Ms White and Mr Addis. He was not given a right of reply; he was invited immediately to a disciplinary meeting.

74. The 21 January invitation references constant rudeness to Ms White and Mr Addis: this does not reflect what they say in the 17 January meeting nor their own email statements; both refer to one situation. The first disciplinary invitation also references several other allegations, none of which have been put to Mr Neagoe previous as part of an investigation process. We find there was no investigation process regarding these allegations; the respondents did not conduct an interview with Mr Neagoe about any allegations stated in the 21 January letter. No documentary evidence substantiating any if the allegations is included with the letter.

75. The 21 January was a busy day for the respondents. Two further meetings took place, about which Mr Neagoe complains.

21 January 2022 Boardroom meeting

76. It seems the company does not keep notes of all its meetings. We have notes of meetings on which the respondents seek to rely, but lack notes of meetings about which Mr Neagoe complains. Mr Neagoe and Mr Port's recollection of this meeting differs. Mr Neagoe alleges that at this meeting Mr Port used "derogatory language and insults" ("worst employee ever", "stupid"), "ordering him to leave the room and shouting at him in an aggressive way". Mr Parsler was also in this meeting. He does not address this meeting in his witness statement. At the hearing Mr Parsler told us the only meeting he recalled on 21 January was a meeting about "door knocker" strategy.

77. Mindful of our findings on credibility, and the lack of minutes for this meeting, the fact that when giving evidence Mr Port acknowledged that there was tension in the relationship at that time, we found it more likely than not that some unprofessional language was used in this meeting.

78. At a further meeting on 21 January, to discuss a strategy of staff knocking on doors of houses where work needed to be carried out to confirm

21 January 2022 "door knocker" meeting

79. At the hearing Mr Parsler told us he recalled attending a meeting about "door knocking" around this time. We find this is likely to have been the meeting about which Mr Neagoe complains. He doesn't not recall Mr Neagoe's health being discussed at this meeting.

80. On 24 January Mr Neagoe emails Ms Molver complaining that he has not received a return to work meeting and that a disciplinary meeting is unsuitable at this time. We find that the invitation to a disciplinary meeting the day he returns from sick leave, citing events alleged to have happened that day (we have found that the events Mr Addis complained about happened the following day), with no evidence about these events or the other allegations included with the invitation, wholly inappropriate in all the circumstances. We have found that there had been no investigation process involving Mr Neagoe when the 21 January disciplinary invitation was sent out, nor any evidence to substantiate the allegations made against him.

81. Indeed, on 25 January references the need for an investigation meeting, and asks for a neutral location off-site for any meeting. In this email Mr Neagoe suggests the invitation to the disciplinary meeting is "impromptu". Given the timeline discrepancies we have found with the allegations, the fact the invitation is sent the same day as written statements about the allegations are received by Mr Port, the complete lack of any investigation involving Mr Neagoe, we agree. This invitation lacks process and integrity.

<u>26 January 2022 meeting</u>

82. At a meeting on 26 January 2022 Mr Neagoe alleges that Mr Port uses derogatory language, asking him to leave his car keys and to leave the room. Mr Port accepted that he asked Mr Neagoe to leave the room, saying this was in the context of the meeting moving to discuss matters that did not concern Mr Neagoe and it was for this reason he was asked to leave.

83. In the context of events to date, our findings about the implausibility of the timing of allegations made by Mr Addis, the haste with which the company dispatched the invitation 21 January disciplinary invitation, the fact that both parties admit by this time the relationship between Mr Port and Mr Addis had broken down, and in the absence of any minutes and specific recollections from third parties at this meeting, we find it is more likely than not that Mr Port did behave in the manner alleged by Mr Neagoe.

<u>31 January 2022 meeting operations room meeting</u>

84. Mr Neagoe complains that on 31 January in the operations room Mr Port asked what Mr Neagoe was doing there and asked him to go downstairs. He admitted that his office was on the ground floor. Mr Neagoe has not offered an explanation as to why he was in the operations room. Therefore, we found that Mr Dean reasonably made these enquiries. There is no contemporaneous evidence he did so in the violent manner alleged.

<u>5 February 2022: second disciplinary meeting invitation</u>

85. On 5 February 2022 Ms Molver writes again to Mr Neagoe, rescheduling the disciplinary meeting (following his request to do so) to 14 February 2022. The letter states that a return to work meeting and investigation meeting have taken

place. Based on our findings, this is inaccurate. This letter extends the allegations made against Mr Neagoe. No investigation meeting has taken place with Mr Neagoe addressing these additional allegations prior to receipt by him of this letter. Again, there is no due process putting the allegations to Mr Neagoe and affording him a right of reply. The respondents, again, hastily jump straight into a disciplinary meeting.

86. This letter does attach some documentary evidence; however, this does not cover all the allegations made in the letter. Again, following the addition of allegations, there is no investigation process involving the claimant nor any opportunity for him to put his case until the disciplinary meeting.

<u>Disciplinary Hearing 14 February 2022</u>

We have considered the minutes of the disciplinary meeting. It was conducted by Mr Port, with some input from Mr Nadin. Mr Port was witness to, and complainant in, several of the allegations stated in 5 February meeting invitation. Neither set of minutes record that the allegations were put in a structured manner. We find he was not afforded a right of reply for all allegations he was facing.

<u>Disciplinary outcome letter 18 February 2022</u>

87. It is Mr Port who issues the outcome letter on 18 February 2022. This letter makes it clear that Mr Port is the decision maker for all allegations. As we have found him integral to some of the allegations as complainant and witness, we find that the disciplinary process was inherently unfair, even accounting for the size of the company. Indeed, the outcome letter introduces allegations and references evidence not put to Mr Neagoe in the disciplinary letter. We find the decision to dismiss Mr Neagoe was based on a disciplinary process that lacked fairness throughout.

<u>Appeal</u>

88. On 25 February 2022 Mr Neagoe appealed the decision to dismiss him. While he does not raise new evidence regarding the allegations he faces, Mr Neagoe’s email does raise concerns about the fairness of having Mr Port as decision maker. Ms Howell did not rectify this unfairness in the appeal hearing. Ms Howell upholds the decision to dismiss in her letter dated 14 March 2022. The minutes of the outcome meeting does not accompany this letter; Ms Howell told us she conducted the appeal hearing on a KIT day and did not have a scanner available. There is no evidence before us the minutes were subsequently sent to Mr Neagoe,

<u>Legal tests applicable to this claim</u>

Unfair dismissal

89. Section 94 of the Employment Rights Act 1996 (the ‘1996 Act’) confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that he was dismissed by the respondent under section 95. This is also satisfied by the respondent admitting that it dismissed the claimant (within section 95(1)(a) of the 1996 Act).

90. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98:

    90.1. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Where this is in dispute, an employer bears the burden of establishing that it had a potentially fair reason for dismissing its employee. The potentially fair reason must be capable of justifying the dismissal (<u>Abernethy v Mott Hay Anderson</u> [1974] ICR 323)

    90.2. Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

91. Section 98(4) of the 1996 Act deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

92. Where the reason for dismissal is misconduct, Tribunals should have regard to the well-established guidance in <u>British Home Stores v Burchell</u> [1978] ICR 303. We have not felt it necessary to include the often-cited passage from Arnold J's Judgment in Burchell. The Tribunal must decide whether the employer held a genuine belief on reasonable grounds, and after carrying out a reasonable investigation, that the employee was guilty of misconduct. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed. It is immaterial how the Tribunal would have handled the events or what decision it would have made. The employer, and not the Tribunal, is the proper person to conduct the investigation into the alleged misconduct. Burchell and countless decisions since have served as a reminder that a Tribunal must not substitute its view for that of the reasonable employer (I<u>celand Frozen Foods Limited v Jones</u> 1982 IRLR 439 and <u>Sainsbury's Supermarkets Limited v Hitt</u> 2003 IRLR 23*).* The employer is the primary fact finder; the Tribunal's role is to review the facts evident during the disciplinary process, not what may be raised at a later date (Fuller v The London Borough of Brent [2011] EWCA Civ 267, at [32] of Cossington).

93. The case of <u>Iceland Frozen Foods</u> is similarly long-standing authority that reminds Tribunals that their function is to decide whether in the particular circumstances the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. The question for the Tribunal is whether the employer acted fairly and reasonably in all the circumstances at the time he was dismissed (<u>London Ambulance Service NHS Trust v Small</u> 2009 IRLR. In <u>Sainsburys Supermarket Ltd v Hitt</u> [2003] IRLR 23 CA, the Court of Appeal confirmed that the band of reasonable responses applies to both the procedures adopted by the employer as well as the dismissal. Ultimately a Tribunal must consider, on the facts of the case, no reasonable employer in the respondent's position would have dismissed the

claimant (British Leyland (UK) Ltd v Swift [1981] IRLR 91). The Tribunal cannot and must not ask whether a lesser sanction would have been appropriate.

94. The Tribunal must consider the whole process when determining fairness, notwithstanding any potential deficiencies (Taylor v OCS Group Ltd [2006] ICR. A Tribunal must consider whether any defect is so significant as to render the whole process unfair, considering equity and the substantial merits of the case to balance the seriousness of the misconduct and any procedural imperfections.

95. The compensatory award if a claim of unfair dismissal is successful must be 'just and equitable'. As a result of the decision in Polkey v AE Dayton Services Ltd [1987] IRLR 503 a Tribunal may reduce the compensatory award to reflect the chance that the claimant would have been dismissed in any event had the dismissal followed a fair process. If, in reaching its conclusions, the Tribunal identifies a deficiency with the process such that it concludes the dismissal was unfair, the Tribunal must assess whether this deficiency made a difference to the overall outcome. The assessment as to the percentage likelihood of dismissal without the defect is by reference to the actual employer in the claim. To substitute the Tribunal's own mindset is an error of law.

Discrimination

Time limits

96. Section 123 s123 of the Equality Act 2010 sets the time limits. The ACAS early conciliation procedure covers discrimination claims. The primary time-limit is within 3 months of the discriminatory action. If the claim is late, the tribunal has a 'just and equitable' discretion under s123(1)(b) to extend time. *In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96*, the Court of Appeal held that 'an act extending over a period' can comprise a 'continuing state of affairs' as opposed to a succession of isolated or unconnected acts. There needs to be some kind of link or connection between the actions.

Direct disability discrimination: section 13 Equality Act 2010

97. Under section 13, Equality Act 2010, "EqA", direct discrimination is defined: "(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others." 101. The protected characteristics are set out in section 4 EqA and includes race, sex and disability. Direct discrimination occurs where the employer treats the employee less favourably because of a protected characteristic. There is no defence of justification for direct discrimination in respect of disability.

98. Section 23 of EqA provides for a comparison by reference to circumstances in a direct discrimination complaint. The Tribunal must consider whether the employee was treated less favourably than they would have been treated if they did not have the protected characteristic.

99. The Tribunal must consider the "mental processes" of the alleged discriminator: *Nagarajan v London Regional Transport* [1999] IRLR 572. The protected characteristic need not be the *only* reason for the less favourable

treatment. It may not even be the main reason. Provided that the decision in question was significantly (that is, more than trivially) influenced by the protected characteristic, the treatment will be because of that characteristic.

100. The burden of proof provisions are contained in section 136 of EqA:

(2) If there are facts from which the [tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the [tribunal] must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene that provision.

101. We have considered the guidelines on the application of the burden of proof provisions were set out by the Court of Appeal in *Igen Ltd v Wong* [2005] EWCA Civ 142. Section 136 prescribes two stages to the burden of proof: Stage 1 (primary facts) and Stage 2 (employer's explanation). At Stage 1, the burden of proof is on the claimant *Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913* *Royal Mail Group Ltd v Efobi [2021] UKSC 22* Stage 2 considers the employer's explanation. Has the employer proved on the balance of probabilities that the treatment was not for the proscribed reason. In a direct discrimination case, the employer only has to prove that the reason for the treatment was not the forbidden reason. There is no need for the employer to show that they acted fairly or reasonably.

Discrimination arising from disability: section 15 Equality Act 2010

102. Section 15 of EqA provides:

(1)A person (A) discriminates against a disabled person (B) if—
(a)A treats B unfavourably because of something arising in consequence of B's disability, and
(b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
(2)Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Reasonable Adjustments: sections 20 & 21 Equality Act 2010

103. Section 20 EqA sets out the duty on an employer to make adjustments; the duty comprises the following three requirements.
…..
(3)The first requirement is a requirement, where a provision, criterion or practice 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, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4)The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5)The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

Section 21 provides:

(1)A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

104. In the case of *Mr J Hilaire v Luton Borough Council* [2022] The Court of Appeal held that, however widely and purposively the concept of a PCP was to be interpreted, it did not apply to every act of unfair treatment of a particular employee. All three words ("provision", "criterion" and "practice") carried the connotation of a state of affairs indicating how a similar case would be treated if it occurred again; although a one-off decision or act could be a practice, it was not necessarily one.

Harassment related to disability: section 26 Equality Act 2010

105. Section 26 EqA sets out the legal definition of harassment; sections (1) and (4) relate to claims of harassment related to disability:

(1) A person (A) harasses another (B) if-
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) The conduct has the purpose or effect of-
(i) Violating B's dignity, or
(ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a) the perception of B;
(b) the other circumstances of the case;
whether it is reasonable for the conduct to have that effect.

106. In considering the words "intimidating, hostile, degrading, humiliating or offensive" a Tribunal must be sensitive to the hurt comments may cause but balance so as not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase: *Richmond Pharmacology Ltd v. Dhaliwal* [2009] IRLR 336. Where a claim for harassment is brought on the basis that the unwanted conduct had the *effect* of creating the relevant adverse environment, section 26 has been interpreted as creating a two-step test for determining whether conduct had such an effect; *Pemberton v Inwood* [2018] EWCA Civ 564. The steps are:

106.1. Did the claimant genuinely perceive the conduct as having that effect?

106.2. In all the circumstances, was that perception reasonable?

Conclusions

107. Mr Neagoe's claims turn on the questions for each complaint we set out in the list of issues.

Unfair dismissal

108. It is agreed that the company terminated Mr Neagoe's employment on 18 February 2022. First, to decide whether Mr Neagoe was unfairly dismissed we must determine the reason or principal reason for dismissal. The respondents say the reason was gross misconduct, specifically allegations that Mr Neagoe bullied his colleagues. The Tribunal will need to decide whether the respondents genuinely believed the Mr Neagoe had committed misconduct. When judged objectively, on the balance of probability, and based on our findings we conclude that Mr Port genuinely believed he was dismissing Mr Neagoe for misconduct, specifically his behaviour to colleagues.

109. However, Mr Port and the company did not act reasonably in all the circumstances in treating their allegations of misconduct as a sufficient reason to dismiss the claimant. We have found that the chronology of the complaints by Mr Addis implausible. The "investigation meeting" predated Mr Addis' complaint and took place the day Mr Neagoe returned from a period of sick leave which meant Mr Addis' allegations of behaviour on a Tuesday could not have taken place the week before.

110. Indeed, at the time the belief that Mr Neagoe had committed misconduct was formed by Mr Port and the company (17 January, the day the first disciplinary meeting invitation was sent out), there had been no investigation involving Mr Neagoe. We have found that the specifics of the allegation had not been put to him and he had not had the opportunity to consider the allegations (which are very serious) nor answer questions about his alleged behaviour to Ms White and Mr Addis. To the extent there was an investigation by the company, it was a short meeting with Mr Addis and Ms White only, short emails from them lacking any detail about what, specifically was said and done by Mr Neagoe, received very shortly before the email was sent inviting Mr Neagoe to a disciplinary hearing. There was no fair investigation involving Mr Neagoe and little evidence on which to base the conclusion of misconduct.

111. We must consider whether Mr Port and the company acted in a procedurally fair manner. The fact Mr Port was one of the complainant's about Mr Neagoe's behaviour (some of the allegations directly involving the pair of them) and a witness to other allegations, that he conducted the meetings with Mr Addis and Ms White and had overall conduct of the disciplinary meeting, making the final decision recorded in his outcome letter, was fundamentally unfair, even for a business the size of the respondent.

112. In reaching this conclusion we have considered the reasons why Mr Neagoe considers his dismissal unfair. We have found there are fundamental flaws in the 17 January evidence of Mr Addis, tainting the evidence the respondents rely on for pursuing disciplinary action. While the location of the meeting is not, in our judgment an issue, the lack of investigation process involving Mr Neagoe, allowing him to give a statement about the events concerning Ms White and Mr Addis. The amount of time Mr Neagoe was given initially to consider the allegations, Mr Port's role

113. Given the fundamental flaws in evidence and procedure, dismissal was not within the range of reasonable responses. In all the circumstances, we conclude Mr Neagoe's dismissal was substantively and procedurally unfair.

Discrimination

Time limits

114. Employment Judge Warren has found that the claimant had a physical impairment of depression and anxiety. We must decide if Mr Neagoe brought his claim within the time limits set by law (section 123 of the Equality Act 2010). The claim form was presented on 5 May 2022.

115. Accordingly, and bearing in mind the effects of ACAS early conciliation (which commenced on 12 April 2022 and a certificate being issued on 14 April 2022), any act or omission which took place before 3 February 2022 is potentially out of time. Given our findings about Mr Neagoe's dismissal, and the fact several of his discrimination complaints were facts considered in the dismissal process, our findings the respondents have misrepresented the situation with the car and Mr Port's conduct in some of the meetings about which Mr Neagoe complains, we conclude it is just and equitable to extent time to include all Mr Neagoe's factual complaints.

Harassment related to disability: section 26 Equality Act 2010

116. We have found that Mr Port has misrepresented his relationship with Mr Neagoe, which remained warm until January 2022. However, there is no evidence that during Mr Neagoe received any support from the respondent's management during his period of sick leave, or on his return. Mr Neagoe's chronology is misguided. The disciplinary meeting dd not take place after this sick leave. It was on his return from a Covid illness in January 2022 that the respondent arranged the disciplinary meeting. At this time Mr Neagoe's medical records were not considered, simply because he did not provide them. By his own admission he was very private about his disability, complaining to this Tribunal that he was unhappy when references were made to the reason for his sickness in meetings.

117. We have found that, following Mr Neagoe's return from sick leave, Mr Neagoe did not participate in a return to work or welfare meeting in substance. He was cross-examined at the meeting about what at work had caused him stress. The meeting was driven by the company's desire for information rather than a desire to support Mr Neagoe.

118. We have found the respondents have misrepresented the status of the Tesla vehicle used by Mr Neagoe. It was a company car; however, we have found it was removed from outside his house while he was overseas and the reason for doing so was to fit a tracker.

119. We have found the explanation there was a delay in paying Mr Neagoe his SSP as the respondents believed he had done overseas implausible on the timeline.

120. We have found that at a meeting on 22 November 2021, during which we have found Mr Port discussed the reasons for Mr Neagoe's absence, and at another meeting later that day. On 22 January 2022, Mr Port used derogatory language towards Mr Neagoe in front of colleagues, subsequently confronting him in the Operations Room on 26 January 2022.

121. We have found the company was aware of Mr Neagoe's disability during this time In our judgment, on balance, this conduct by an employer and senior

manager / owner of a business to an employee is unwanted. On balance, this behaviour over this period related to Mr Neagoe's disability, specifically it was his depression and anxiety which had, in substance, been the reason for his absence and his managers and colleagues knew.

122. Taking into account Mr Neagoe's perception at the time, we conclude the self-titled "welfare meeting" seeking information rather than a desire to support Mr Neagoe, nonpayment of the SSP for "reasons" not accepted by the Tribunal as valid and Mr Dean's conduct in meetings in November and January 2022 had the effect of creating a hostile and humiliating environment for Mr Neagoe. For these reasons we conclude that the respondents harassed the Mr Neagoe.

123. We conclude the other allegations which we have found took place as Mr Neagoe described are not harassment as we have accepted that the respondents had fair reasons for behaving as they did. They did not offer Mr Neagoe support and encouragement during his two months of absence due to illness as initially they were aware (from the GP note) that he was suffering with stress at work and thought it in his best interests that work did not contact him during this time. Mr Neagoe's Tesla was removed to have a tracker fitter, and once the respondents had established Mr Neagoe was back in the country and back at work, the car was returned to him.

Direct Disability Discrimination section 13 Equality Act 2010

124. We must decide whether these allegations, which we have upheld factually, but have concluded are not harassment, amount to direct discrimination, in that the respondents treated Mr Neagoe less favourably than it would have treated a hypothetical comparator, being a person who is not disabled and who was not in materially different circumstances. In our judgment the respondents would not have contacted any employee they had been told was suffering stress at work, to allow that person to recover. They would have removed a company car to fit a tracker (as they did to other company cars at that time). For these reasons Mr Neagoe's claim of direct disability discrimination does not succeed.

Discrimination arising from disability: section 15 Equality Act 2010

125. Mr Neagoe relies on his dismissal as the unfavourable treatment. He was absent from work due to his disability of anxiety and depression; the stress at work was caused by this. However, based on our findings about the dismissal process, the reason for Mr Neagoe's dismissal was not this absence from work. The reasons given were misguided and partially investigated allegations made by a couple of Mr Neagoe's colleagues and the breakdown in his relationship with Mr Port. However, there is no evidence that the claimant had decided to dismiss Mr Neagoe due to his 2 month absence in November 2022. Mr Neagoe was not dismissed due to his disability; his section 15 claim fails.

Failure to Make Reasonable Adjustments: section 20 and section 21

126. We have found the respondents knew Mr Neagoe was a disabled person. However, we have found there is no evidence that the respondents had a "PCP" (provision, criterion or practice, of requiring its Production Director to

manage the Engineering Team, the Projects Co-ordinators and the Project Managers Teams? As they did not have the practices Mr Neagoe alleges, Mr Neagoe reasonable adjustments claim cannot succeed.

127. For these reasons we conclude that :

127.1. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed by the second respondent;

127.2. The complaint of harassment related to the claimant's disability is well-founded and succeeds;

127.3. The complaint of direct discrimination related to the claimant's disability is not well-founded and is dismissed;

127.4. The complaint of unfavourable treatment because of something arising in consequence of disability is not well-founded and is dismissed; and

127.5. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

128. The Tribunal will identify a date to determine remedy for the successful claims of unfair dismissal and harassment. The claimant and respondent will then be informed of the date in writing and will receive case management orders for that hearing. It may be several weeks before you receive notification of the remedy hearing date and the case management orders. If at any time before the hearing parties are able to settle the claims they should write to the Tribunal so that the hearing can be vacated.

Employment Judge Hutchings

29 April 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON
2 May 2024

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/