



EMPLOYMENT TRIBUNALS

Claimant: Mr A Hannan

Respondent: Bull Doo Doo AH Ltd

Heard at: Watford

On: 13,14,15 November 2023
1 & 2 February 2024
(14 March 2024 in Chambers)

Before: EJ Bansal
Members – Mr T Poil & Mr N Boustred

Representation

Claimant: In person

Respondent: Miss Adjibade (Representative)

RESERVED JUDGMENT

The unanimous judgment of this Tribunal is that the claimant's complaints of;

1. Unlawful discrimination on the grounds of associative disability contrary to s13 of the Equality Act 2010 fails and is dismissed.
2. Automatic unfair dismissal for asserting a statutory right contrary to s104c of the Employment Rights Act 1996 fails and is dismissed.
3. Unlawful deductions of wages contrary to s13 Employment Rights Act 1996 fails and is dismissed.

REASONS

Background

1. By a Claim Form presented on 9 October 2022, following a period of ACAS early conciliation between the period 1 August 2022 and 12 September 2022, the claimant made complaints for discrimination on the grounds of associative disability; automatic unfair dismissal for proposing to make a flexible working request, and unlawful deductions for outstanding pension payments.
2. The respondent resisted the complaints asserting that the claimant was not subject to any unlawful discrimination; that it lacked knowledge of disability; and that the reason for the claimant's dismissal was performance and

conduct. Also the claimant was not owed any monies for unpaid pensions contributions.

The Legal Issues

3. At a Preliminary Case Management Hearing held on 25 April 2023, Employment Judge Michell in his Order clarified the claims and directed the claimant to provide further information. For this hearing, the respondent representative produced a List of Issues. This List was discussed and finalised with the parties at the start of this hearing. Accordingly the agreed issues to be determined are annexed to this Judgment.

The Hearing

4. The claimant represented himself as a litigant in person. The respondent was represented by Miss Adjibade (Consultant).
5. The Tribunal was presented with a bundle of documents of 532 pages. The Tribunal observed from their reading there was a lack of documentary evidence to support the key issues to be determined. Therefore, the Tribunal had to make findings of fact based on the evidence heard and assessment on the credibility of the witnesses. The Tribunal read and considered the documents directed by the parties during the hearing.
6. The claimant presented a lengthy witness statement of 26 pages comprising 87 paragraphs. The statement was written with the purpose to advance his case, and contained allegations and matters about the respondent witnesses which were not directly relevant to the agreed issues. Also the claimant made reference to the Equality Act 2010 and how he interpreted the actions of the respondent had contravened the Act.
7. For the respondent, there were statements from Mr Ali Miah (Consultant and a former Director of the respondent), and Ms Amna Khan (Partner with the respondent). Both witness statements were short and particularly lacked detail, about the dismissal meeting which was a key issue in this claim. The Tribunal therefore asked questions of the claimant and the respondent witnesses, to assist it to make findings of fact and an informed decision.
8. All witnesses gave oral evidence and were cross examined. The Tribunal also asked questions for clarification. At the conclusion of the parties evidence, both parties sent in their written submissions which the Tribunal considered in their final deliberations.

Credibility of the witnesses.

9. Both parties had polarised versions about key incidents and discussions held. Given the lack of documentary evidence in the form of email correspondence and notes of discussions and meetings held the Tribunal had to make findings of fact taking into account the assessment of the credibility of the witnesses. The Tribunal observed that both the claimant and Mr Miah showed ill feeling and animosity towards each other during this hearing.

10. The Tribunal did not find the claimant to be a credible witness. During evidence he was repetitive and gave exaggerated accounts of events. He did not give direct answers and repeatedly accused the respondent of unfair treatment and discrimination. During his oral evidence and cross examination of the respondent witnesses he was repeatedly directed to focus on the agreed list of issues to be determined.
11. The Tribunal found Mr Miah gave evidence consistent to his witness statement. Ms Khan came across as a credible and candid witness.

Findings of Fact

12. Based on the evidence heard and read, including the assessment on the credibility of the witnesses the Tribunal made the findings of facts as set out below. Where a conflict of evidence arose the Tribunal resolved the same, on a balance of probabilities.
13. It was not necessary and neither was it proportionate to determine each and every fact in dispute. Hence, only relevant findings of fact pertaining to the issues and those necessary for the Tribunal to determine have been referred to in this judgement. Also the Tribunal has not referred to every document it read and was referred to in the findings as set out below. The numbers appearing in brackets in this judgment is reference to a page number in the bundle.
14. The respondent is a small firm of Chartered Accountants based in Harrow, Middlesex. The firm was previously known as Hemsley Miller Ltd. At the date of the claimant's employment the respondent name was Hemsley Miller Ltd. On 9 September 2022 there was a change of name to the respondent. At the date of the claimant's employment the respondent employed 7 staff. The number included the claimant, who was the only Semi-Senior Accountant. The other staff were Office Manager/PA; 2 trainee Accountants; Ms Khan (who was then Senior Accountant and Manager of the office); a Senior Accountant and Mr Miah, (who was then the Partner).
15. The Tribunal recognised the claimant is a qualified and experienced Accountant. He commenced employment with the respondent on 13 December 2021. His title was Semi-Senior Accountant. He was dismissed by the respondent effective on 23 June 2022.

Appointment of the claimant

16. The claimant is a family man with four young children. He resides with his family in the same house as his brother and his family. He lives in East London.
17. On 21 October 2021, the respondent advertised on Indeed for the position of Semi Senior Accountant. Attached to the advertisement was a job description. In particular, it expressly stated the position was office based, and working remotely was not an option. (p174-175)
18. The claimant applied for the position by application. He had telephone discussions and attended two interviews held on Microsoft Teams after

working hours. Mr Miah and Ms Khan were involved in this process. The claimant was offered the role by email dated 12 November 2021. (p106) His start date was stated as 6 December 2021. His role was office based and his appointment was subject to a 6 month probationary period and satisfactory references.

19. The respondent issued the claimant with a Contract of Employment sometime in March 2022. The document disclosed in the bundle is dated 04/03/2022 and is unsigned. This stated the employer to be Hemsley Miller Ltd; a start date of 13 December 2022 (which is agreed by the parties as correct); place of work being the respondent's offices; and a probation period of 6 months. (p108-118). The respondent did not issue the claimant with an Employee Handbook, although a copy was included in the bundle. Neither was this Handbook relied upon or referred to by the respondent.
20. The claimant's travel time from home to the respondent offices was about 90 minutes each way. Ms Khan was the claimant's Line Manager and supervisor. She attended the office 3 days a week and also worked from home. At the time of the claimant's employment, the respondent offices comprised of a two floor building. The office was open plan. Mr Miah had his own office. The claimant sat in a bank of 4 desks near to the two trainees he supervised as part of his role. Ms Khan's desk was also within this bank of desks.
21. For the first two-three months of his employment the claimant worked on personal tax returns as the deadline date was at the end of January 2022. For this work he had access to the necessary software. He did not start to work on preparing client accounts until late February into early March. This was not disputed by the claimant.

Claimant wife's disability

22. In evidence, the claimant admitted that he did not disclose any written medical evidence or supporting information about his wife's health condition either in the interview process or during his employment. The claimant explained in 2010 his wife was diagnosed with mixed mitral valve disease. The claimant said he did not know he had to inform the respondent about his wife's condition. He further stated that he is also a carer for his wife, on the basis he cares for his wife when she is unwell and looks after their children.
23. The claimant also admitted that he did not know that his wife's medical condition was recognised as a disability under the Equality Act 2010, until he contacted ACAS for early conciliation. Also, until then he did not know about disability discrimination or about his rights to flexible working. It was following discussions with ACAS that he did some research on these issues. It is then that he formed the view that he had suffered discrimination on the grounds of his wife's medical condition, and his legal rights to flexible working had been violated. He then formulated and presented this Tribunal claim.

Working from home

24. Mr Miah confirmed that the respondent's unwritten policy and practice is that employees are required to work from the office, unless allowed to do with prior agreement. Those who work from home have more than 10 years post qualification experience; are semi-retired or are self-employed. Ms Khan and another employee who is a working mother are permitted to work from home on certain days due to their personal circumstances. One other reason given why home working is not allowed is for data protection and confidentiality reasons given the nature of their work.
25. Mr Miah confirmed that during the covid pandemic period all employees worked from home due to the lockdown restrictions, and that as soon the restrictions were eased all employees returned to the office, except the employees who were allowed to work from home.
26. The claimant claimed that some employees were permitted to work from home and were given remote access to the accountancy software used. He was not allowed. Mr Miah disputed this and explained that access was only given to those employees who worked from home by agreement.

Software Licences

27. During the pandemic period the respondent purchased licences for software used for their accounting work. The licences were initially for a 6 month period. The initial licences expired in September/October 2020. Not all of the licences were renewed because the number of licences were not required.

Training- CaseWare

28. The claimant claimed that during his interview, there was discussion about being trained on the CaseWare accounting software used by the respondent. He claimed he was told that he would be booked on a training course as a priority, however, this was not done and he never was sent on an external training course.
29. Ms Khan clarified the position. She confirmed there was no verbal or express agreement that the claimant would receive specific training. He was told that he would be provided with training as part of his role. The respondent uses the CaseWare software in the preparation of client management accounts, and that QuickBooks, Sage and Zero software is used only for bookkeeping work. The claimant, at the start of his employment did on-line training on Quickbooks, Sage and Zero. In fact, the claimant accepted he had access to Quickbooks and Sage as he had personally subscribed to these, and that there was no issue with training on these accounting software.
30. About the CaseWare accounting software. Ms Khan explained that only she and Mr Miah had attended an external course on this software. Some of their employees had received training from either Mr Miah or herself. In December 2021, she searched to find an external training course but none were available. Therefore, at first she directed the claimant to read the manual, which is used by their employees. They also have access to a

helpline number. The claimant did not dispute that he had received training from one of their employees, Nahid (Trainee Accountant) and was able to consult the software manual and helpline. Ms Khan and another employee Tasnim (Senior Accountant) were both available to assist and provide training.

31. Ms Khan pointed out that if the claimant had not received this training he would not have been able to work and produce the accounts he started working on from February onwards. The Tribunal preferred Ms Khan's evidence and explanation. Accordingly, the Tribunal found that contrary to the claimant's assertion he did receive training on the CaseWare software, albeit this was given in-house by his colleague.

The claimant's request to work from home – December 2021

32. According to Ms Khan, on 23 December 2021 the claimant told her he was planning to do some learning on software QuickBooks and Sage during the Christmas period from home. He asked if he could get access to work from home. Ms Khan informed him that it was unlikely this would be possible before the Christmas break because their IT Dept would have to deal with the technical issues and that he would need Mr Miah to authorise this.
33. Ms Khan was adamant that, contrary to the claimant's assertion, in their brief discussion he did not say anything about his wife's health condition. She was clear that the discussion was only about him wanting to do some Training during the Christmas break. The Tribunal accepted Ms Khan's evidence on this because on the claimant's own evidence his wife's health condition did not become an issue for him until her pregnancy which was from February 2022.

Claimant's wife medical condition

34. Ms Khan recalled that sometime in early January 2022, whilst her team members were sitting at their desks, she reminded them to start booking their annual leave for the holiday year. The claimant remarked, "*I don't really need holidays as I don't take the kids anywhere, all I need is a few days off here and there for my wife's appointments. My wife had a condition in Pakistan where they said she could not have children but she has had three children here in the UK*". Ms Khan explained this was the first she heard anything to do with his wife's appointments. She did not consider this required any further discussion as she took the remark to be a passing comment and it did not imply anything current or serious.
35. The claimant explained that on 25 January 2022 his wife became ill, and was admitted to hospital on 31 January 2022.
36. The claimant in his witness statement stated that on 25 January 2022 he discussed his wife's health condition with Ms Khan and enquired if he could work remotely during emergencies like this. He claimed she told him that she would need to discuss this with Mr Miah. Ms Khan's evidence was that she had no recollection of this particular conversation. Ms Khan said if this conversation had taken place she would have discussed this with Mr Miah.

37. Ms Khan referred to the conversation at paragraph 34 above, as the first time the claimant made reference to his wife and hospital appointments, until the next occasion which was sometime in 13 June 2022.

7 February 2022 – Claimant request for remote access

38. The claimant confirmed that on 5 February 2022 his wife found out that she was pregnant. He stated because of her heart condition she was considered to be at high risk. The claimant provided no medical evidence in support of this. On 7 February 2022, the claimant asserted he told Mr Miah about his wife's having attended hospital at the end of January, and asked to work from home. He asked for remote access like other employees. He explained Mr Miah told him that he will deal with his request on his return from annual leave. Mr Miah denied any knowledge of this discussion. He confirmed that if this conversation had taken place he would have informed Ms Khan as she is the claimant's Line Manager and made her aware of his wife's pregnancy. Ms Khan confirmed that Mr Miah did not mention anything to her about this alleged conversation. The Tribunal preferred the respondent's evidence as it is highly probable because of the pregnancy news Mr Miah would have told Ms Khan.

Knowledge of claimant's wife pregnancy

39. According to the claimant, he made Ms Khan aware of his wife's pregnancy soon after he and his wife found out their good news. In his statement the claimant stated Ms Khan found out during a discussion with him, when he enquired about her 7 seater car as he was looking to buy a bigger car. In his statement, the claimant stated, her comments to him were "you have three babies, why do you need a 7-seater car.", to which he replied "soon there will be 4 children". Ms Khan denied this conversation took place as alleged. Her recollection was that the claimant did ask her if she had a 7 seater car. She asked him why, as he has 3 children to which he replied, "maybe for the future". Nothing further was said about this.
40. In evidence both Ms Khan and Mr Miah confirmed they did not know the claimant's wife was pregnant until they read the claimant's letter of appeal. The claimant did not, in cross examination question Ms Khan or Mr Miah on this issue. The Tribunal concluded that Ms Khan and Mr Miah did not know.

14-16 February 2022 – Claimant was forced to work from home

41. On 14 February 2022 there was a problem with the water supply at the respondent office building. That morning the claimant was on his way into the office at the time, when Heena Shah(HS) (Mr Miah's PA) sent several text messages to all employees stating, "*we have no water in the office ... not sure if you guys wants to work from home or something..*" "*Everybody that's coming in coming. St Anne's have a toilet facilities if you need. See you all at 9.*" (p222)
42. The claimant arrived at the office at about 9am and found the office closed. He then sent a text to HS, who replied that she was on the phone and asked him to call the office line next time. In his witness statement the claimant stated, HS opened the door to let him in, and that HS told him to go home as the office was closed and the staff were instructed to work from home.

He claimed that he told HS that he could not afford to use his holidays because he needed them for his wife's future hospital appointments and to care for his children. He said he raised his wife's health concern which she ignored. In evidence the claimant gave no information as to what he told HS about his wife's medical condition other than an assertion he told her. The claimant also asserted that Mr Miah came to the office briefly that afternoon. He tried to speak with him but Mr Miah was not interested and then left. Mr Miah confirmed he had no recollection of this alleged conversation.

43. The claimant worked that day as normal. In his witness statement, the claimant asserted that *"everyone was instructed to work from home except myself. I was told that if I didn't come into the office, this time would be deducted from my annual leave. Given that I needed to reserve my annual leave for my wife's hospital appointments, I felt I had no option but to comply."*
44. The Tribunal considered the claimant's assertion based on the evidence. The Tribunal found the claimant's assertions to be without merit for the following reasons.
- (i) The claimant provided no direct evidence to show that he was told to attend the office that morning and other employees were told to stay home.
 - (ii) HS's text message exchange at paragraph 41 is contrary to the claimant's claim that he was told he must attend the office. The text message is clear. There is no direction that the claimant or other employees must come in.
45. That afternoon at 16:07 HS updated the employees with a text saying, *"Still no water in the toilets or kitchen: but will keep everyone updated once I know more."* Another text was then followed, stating, *"still no water; & will apparently come on today or tomorrow. When I get in tomorrow I will let everyone know and then everyone decide what they want to do cos if the toilet is not flushing it's not really safe or even nice for the rest of us."* (p224)

15 February 2022

46. Next morning before office hours, HS sent a text to everyone, stating, *"morning everyone sorry for the very early text but thought I'd let you know that there is still no water... engineer is expected to be back on site this afternoon. If you can work from home please do so and hopefully this issue will be fixed today and I'll see you all on Wednesday. I will keep you posted once I know more."* (p225)
47. At 08:15, the claimant sent a text to Miss Khan, stating, *"Hi Amna, Sorry to disturb you, you might have seen in the messages yesterday I was in office but I think she doesn't like that so to avoid any conflict I prefer to work from home or to take day off when you are free please call me as well. Thanks Regards. Abdul"* (p232)
48. At 09:51 HS sent a text to the claimant and asked, *"Abdul, are you coming to work today?"*. He replied *"working from home"*. (p225) This then led to further emails between HS and the claimant. One of the emails from HS to the

claimant, was, “ You told me yesterday you didn't have access as early hasn't approved your access until he returns from holiday. I will call Ali and speak with him. Also if you are working from home please ensure you have your Keevio on so you can help to answer the phones.” (p226)

49. Miss Khan responded to this exchange and wrote, “ Heena, Abdul spoke to me in the morning and is doing online training.” She also send a further text message, stating, “ Also if the water is still not working tomorrow then I think everyone needs to come in and we could just get big water bottles for drinking and used toilets at Saint Anne's.” (p227) The claimant replied, “Yeah sure I will come in tomorrow.”(p227)
50. Based on the discussion with Miss Khan, the claimant worked from home on 15 February 2022. Accordingly, the claimant's claim that he was forced to attend the office on this day is incorrect.

16 February 2022

51. On this day the claimant attended at the office. Other employees also attended. The Tribunal noted Ms Khan's text message of 15 February 2022, at paragraph 49 above, in which she stated that “everyone needs to come in..” In his witness statement the claimant stated, “Ms Khan insisted that I should come to the office on February 16 warning of potential disciplinary action if I fail to do so. I felt compelled to attend the office on February 16 under duress. All employees were instructed to work from home due to health and safety concerns except myself.” (Paras 24 & 25). The Tribunal considered the text message exchange and Ms Khan's evidence. The Tribunal found the claimant's assertion to be without merit, for the following reasons;
- (i) Ms Khan's text message of 15 February 2022 is clear. It refers to all employees. She wanted everyone to attend at the office on the 16th.
 - (ii) Ms Khan's oral evidence was she asked all employees to come back into the office on 16 February 2022. She categorically denied that she told the claimant that if he did not he would be disciplined and/or there would be a deduction of pay. There was no reason to say this or single out the claimant. There was no evidence of difficulties in their working relationship which the claimant accepted.
 - (iii) The claimant has exaggerated this issue in order to discredit Ms Khan and support his case. If this threat had been made there was every reason for the claimant to complain and raise this issue with Ms Khan either verbally or in writing. The claimant did not do so. He gave no reason why he did not do so, particularly as the claimant came across as an direct individual who was not afraid to raise matters with Ms Khan or Mr Miah.

Meeting March/April 2022 – Review Meeting

52. The claimant stated to work on preparation of client accounts from February onwards. He then access to and use of the CaseWare accountancy software. According to Ms Khan, sometime at the end of April 2022, she and Mr Miah held a meeting with the claimant. The purpose of the meeting was to review one of the first set of accounts completed by the claimant. Mr Miah had reviewed the prepared accounts and made various observations, which

he then asked Ms Khan to review again. Mr Miah's evidence about this meeting was also to discuss his progress and what could be done to assist him going forward.

53. The claimant in his statement referred to being called to a meeting between 1-3 March 2022 and not April 2022. The claimant gave no evidence as to the issues discussed but asserted that at this meeting he repeated his concerns and the issues he was facing with the respondent. He did not specify what issues and concerns were repeated. Ms Khan and Mr Miah were not cross examined on this. The Tribunal noted the claimant has made no mention of this meeting in his Particulars of Claim.
54. Neither party produced any written record or minutes of this meeting. In the absence of any supporting evidence the Tribunal concluded that if there was a meeting the purpose would have been to discuss the claimant's work.

Claimant's desk move

55. The claimant sat in the bank of desks with some junior employees, who he was responsible to supervise. His desk was the one used by his predecessor. The bundle contained some photographs of the area in question, which gave the Tribunal a sense of the working area in question.
56. Sometime in May 2022, Ms Khan decided to move the claimant's desk nearer to hers. This move was within the work area used by the team. The Tribunal observed that contrary to the claimant's assertion, the move of desk did not isolate him or take him away from the team. The Tribunal concluded the move of desk did not physically isolate the claimant.
57. Miss Khan's evidence was that she asked him to move. The reason for this was to assist her to support the claimant. She had noticed the claimant was making mistakes which he should not have been making, and that by moving him closer to her desk allowed her to work closely with him.
58. The claimant claimed that Ms Khan told him she wanted him to move desks because she noticed that the trainees were wasting his time and he should not train them as they were getting paid for their studies. In the claimant's view this was an attempt to isolate him from the team.
59. The Tribunal concluded that contrary to the claimant's assertion, the move of desk did not isolate him or take him away from the team. The Tribunal also found it more plausible that Ms Khan wanted the claimant to be closer to her desk so that she could work closely with him. The move had nothing to do with his trainees as claimed. This is an example how the claimant exaggerated his evidence to discredit Ms Khan.

13 June 2022

60. On Monday 13 June 2022, the claimant returned to the office after a week's leave to visit Istanbul for his hair treatment. Ms Khan recalled that, he was in high spirits; mentioned that his wife was unwell, and that he may need to take time off for her hospital appointment. He asked if she had spoken to Mr Miah about his working from home and getting access to their systems.

61. According to Ms Khan this was the first time the claimant gave a reason for wanting to work from home, namely because of his wife's hospital appointment. He gave no details about this appointment or why she was having to attend hospital. She did not probe him about this because she did not think it was necessary, as he did not give any information himself. She was not aware he had taken time off in the past weeks because of his wife's health. If he had done so he may have asked him.

Discussion on 22 June 2022

62. Both Mr Miah and the claimant agreed they had a discussion after 5pm on 22 June 2022 after everyone had left the office. Mr Miah's recollection of this discussion was that the claimant came into his room. He asked him if he could work from home to look after his children as his wife had to attend a hospital appointment. Mr Miah admitted he asked if his wife could take the children with her to the appointment. The claimant replied, she could not because of covid rules. In reply Mr Miah told the claimant, if he was having to look after his children then it would be best to take the day as annual leave. He then left. Mr Miah denied the claimant's account of the discussion and in particular that the claimant said that "I will check my legal rights.."

63. The claimant in his witness statement gave a different account about their discussion, and also alleged Mr Miah made derogatory and offensive personal remarks about his wife, which he found unacceptable. Mr Miah denied these allegations. The Tribunal made no findings about the alleged remarks made by Mr Miah as it was necessary to do so. This is an example of their ill-feeling towards each other.

64. On the key issue, about what the claimant said to Mr Miah about his right to flexible working or his legal rights generally, the claimant gave his account in his witness statement in the following terms, which he repeated in oral evidence. He asserted he told Mr Miah that, "*because of his wife's health, he sometimes has to go to hospital on short notice or have to take care of his children if his wife is unable to*". He also mentioned that because of his wife's condition he may have to take annual leave soon. According to the claimant, Mr Miah is replied, "*He would not approve even a single day of leave in September as this was his busy period. He said Miss Khan had already booked two months holiday during her kids school holidays, and he cannot give any holidays to other employees*". At this point the claimant asserted he told Mr Miah, that "*I will check my legal rights about these issues, as the impact upon my family would be significant*". He then left the office.

65. Given this conflict of evidence between the parties and in the absence of any contemporaneous note of this discussion, the Tribunal gave consideration to the claimant's appeal letter dated 29 June 2022, which was the first correspondence sent by the claimant after his dismissal. (340-341) In this letter, the claimant stated as follows;

" .. I raised this issue (i.e request to work from home on day's of my wife's hospital appointments) with Ali on 22nd June 2022 he replied very rudely to me and even called my wife irresponsible person who cannot go to the hospital by herself. I asked him why he is treating me like, as every single person in this company has access. I told him, I would have no choice but

to go for unpaid leave because of my wife health in pregnancy which would affect not only my work but my financial condition as well.....” The letter makes no mention or reference to his using the words *“I will check my legal rights about these issues, as the impact upon my family would be significant”* and neither does it state that he made a request for flexible working. The letter makes reference to the Equality Act 2010 and states *“that it is unlawful to directly discriminate against an employee by treating them less favourably because of their association with a person of protected characteristic, and the duty to make reasonable adjustments”*.

66. The Tribunal then considered the claimant’s Particulars of Claim submitted with his Claim Form. In that there is no mention of the above conversation in the terms as expressed. The only reference made is in the following terms, “ When I requested flexible working access on 22nd June, soon after 15 hours of this day they asked me to come to the meeting and hand over the dismissal letter...” (p22).
67. The respondent has maintained that during his employment the claimant did not use the words “flexible working” and neither did he make a request for flexible working. The use of these words first appeared in the Claim Form.
68. Taking the above observations into account, the Tribunal concluded the claimant did not in his conversation with Mr Miah say the words, *“I will check my legal rights about these issues, as the impact upon my family would be significant”*. Neither did he make a request for flexible working. Had he done so, he would have mentioned this in his appeal letter and the Claim Form. Further by his own evidence to this Tribunal he was not aware about rights to flexible working until after his dismissal. The Tribunal’s view is that there was discussion about the claimant enquiring about wanting to work from home when his wife was to attend to her hospital appointment so he could look after his children. This discussion was not in the context of the claimant either making or proposing to make a request for flexible working which is the claimant’s pleaded case.

Meeting – 23 June 2022

69. On 23 June 2022 the claimant attended a meeting with Ms Khan and Mr Miah. The respondent claimed this was the claimant’s 6 month probationary review meeting. The claimant disputed this. The respondent provided no written evidence to show that this was a formal 6 month probationary meeting or that the claimant had been given advance notice about it. The Tribunal did not accept the respondent’s evidence on this point.
70. There is no dispute the claimant was dismissed at that meeting. At the end of this meeting he was given a letter confirming his dismissal. The letter stated the reasons for dismissal, namely, (i) your performance during the probationary period was unsatisfactory; and (ii) your formal communication skills fell short of what is expected from a professionally qualified individual. (p339-340) He was given the right of appeal which he exercised. His appeal was not upheld. (p384)
71. In considering the reason for dismissal the Tribunal noted that both Mr Miah and Ms Khan’s account of this meeting in their respective

statements was brief and identical. The Tribunal therefore, considered it appropriate to ask questions of both witnesses for their account of this meeting and reason for dismissal.

72. Mr Miah gave his background for calling this meeting. He explained over the past few months he had concerns about the claimant's performance. He highlighted two particular accounting matter pertaining to two clients.
73. He explained that in that week (i.e week of his dismissal) he had set the claimant a task to redo some accounts he had done previously in April 2022. The set out accounts related to a client Bradleys. After he reviewed these accounts for the first time, he sent an email to Ms Khan on 6 April 2022 in which he expressed his deep dissatisfaction and concern about the claimant competence. The heading of the email is "*Total Dogs Dinner*" he stated. *"I do not think Abdul has been inducted properly on our accounts preparation process and this is why when normally I spent 20-30 minutes in reviewing Bradleys accounts I have now spent nearly six hours and yet not completed. Abdul presented an incomplete set of account for me to review and whilst initially I thought this shortcoming are isolated and I attempted to just clear these myself and move on, many hours later I got frustrated of what I was finding. I do not doubt his knowledge of accounts preparation but it is obvious that his experience is of a very poor standard as I would expect considering where he has come from, ..what surprised me is that he is not critically evaluating the information that is in front of him and looks to me that he is preparing schedules for the sake of it as opposed to understanding the reasons behind why we prepare these... I think you need to slowly warm him up to the job and initially keep an eye and review his work and give feedback so that he is understanding and getting things right. I would suggest that you review his work before these are marked from my review and in Drive until such time where we think he has grasped the concept properly.*
74. In his witness statement Mr Miah referred to the above accounts. He stated a few days before 23 June 2022 he had to review the same set of accounts which he had asked the claimant to redo. He had hoped to present the accounts to the client that day. Mr Miah said he was baffled to see the same "mess" as he described it. He then called the claimant into his office to try and help him to understand how to prepare the accounts with the required information. Mr Miah explained that he showed the claimant what was required and what he needed to do to rectify the errors. He sent him away to revise the accounts. The claimant returned after some 10 minutes. On checking the revised accounts Mr Miah found the mistakes which had been highlighted and discussed had not been rectified. He then asked Ms Khan to complete the task. This confirmed his assessment and concerns about the claimant's performance and ability.
75. Mr Miah also referred his email dated 17 June 2022 to Ms Khan dated 17 June 2022 concerning a client Surelet, in which he stated, "I was hoping to finish and send the draft to the client but I could not progress because the L3 schedule is a mess and it is not balancing at all. I cannot even follow the entries in the system and he seem to have been spitting journals like there is no tomorrow. Please can you review this and see where he has gone wrong and also make the adjustments with him so that he gets. ...I

need to send this out on Monday as X was expecting it today. This is the second time the numbers are thrown back to him and I am not really impressed at all as I specifically asked him if he has checked that and he assured me so.(p335)

76. Mr Miah also referred to an issue where the claimant's communication caused offence to a client. In this particular matter, the claimant in an email to a client had incorrectly addressed the client contact as "Dear welling", which caused the client offence. In an email in reply the client corrected the claimant. Mr Miah did not consider this to be professional and brought this to the attention of Ms Khan. In an email to her dated 25 May 2022, he stated, "*Please can you make sure everyone knows how to address people I am surprised that this has happened and you can see that the client took offence..*" (p323)
77. Ms Khan in her oral evidence explained that she held supervision sessions and file reviews on a regular basis. These were done on an ongoing basis dealing with client accounts. She did not keep any meeting notes but pointed out to some emails in the bundle showing their exchanges. She stated that over the past weeks she also had concerns about the claimant's work which she had been monitoring. The Tribunal observed there were no written performance reviews to consider and not all of the emails referred to indicated any specific performance issues. They showed technical accounting issues and enquiries and to do tasks to progress the accounts. In contrast the evidence of Mr Miah showed concerns about the claimant's performance and account preparation issues.
78. Not surprisingly, the claimant challenged and disputed the claimant's assertions. He claimed there was no cause for concern about his work or performance. His evidence was that for the first three months of his employment he respondent raised no issues about his performance despite allocating him with work which was impossible for him to complete. He further, claimed that after he raised concerns about his treatment he felt immediately targeted. He believed there was no issue about his performance and that he has been targeted by Ms Khan and Mr Miah due to his making a request for flexible working arrangements.
79. Based on the evidence heard and the emails referred to the respondent, the Tribunal concluded the respondent had genuine concerns about the claimant's work, albeit these were disputed by the claimant.
80. Mr Miah confirmed that after his meeting with the claimant about the accounts for Bradleys he had a discussion with Ms Khan and informed her of his concerns and dissatisfaction with the claimant. They then discussed calling the claimant to a meeting, and they prepared two letters one being his termination letter and the other one was confirming his continued employment having passed the probationary period. This letter was not included in the bundle.
81. Ms Khan called the claimant to the meeting at about 10.30am and told him it was a review meeting. She did not inform him that his employment may be terminated. No notes of this meeting were taken. Ms Khan explained that they had concerns about his work produced and that it was not to their

standard. In trying to have a conversation about this, the claimant started shouting and would not listen. He would not accept what he was being told and became confrontational, at which point the conversation became personal. Ms Khan admitted that in the heat of the moment she said, words to the effect that *“your ways of working are incompatible with this firm, you will find something.”* In response the claimant remarked that she was rubbish, to which she replied *“you are too good for us, we are rubbish, you will find a new job”*.

82. Ms Khan explained that the claimant’s conduct was unacceptable, at which point Mr Miah decided to terminate the claimant’s employment and handed to her an envelope which contained the dismissal letter which she handed to the claimant, following which he left the building. The dismissal letter confirmed the stated reasons as (i) your performance during the probationary period was unsatisfactory and (ii) your formal communication skills fell short what is expected from a professionally qualified individual. (p339)
83. In contrast the claimant’s evidence was that when he was called into the meeting room, Mr Miah and Ms Khan started talking about his performance. He said this was the first time his performance had been raised as an issue. The client Surelet was mentioned and a discussion took place and he asked for examples of his performance, which were not given. There claimant stated there was other personal accusations made by Ms Khan. Mr Miah stopped the meeting and handed him a letter and told him he should leave.
84. The claimant was given the right of appeal. The appeal was heard on 11 July 2022 by an external HR Consultant from Peninsula, the respondents advisers. Given that the Tribunal was not required to determine the issue of fairness, the Tribunal gave no consideration to the appeal process and outcome. However, the Tribunal in their deliberations considered the contents of the claimant’s appeal letter dated 29 June 2022. (p340-341).
85. The Tribunal concluded that the claimant’s conduct in that meeting appeared to have strengthened the respondent’s decision to terminate his employment.

Pension claim

86. The claimant’s pleaded claim for the sum of £339.18 is for unpaid pension contributions to NEST for the period of March to April 2022. The claimant asserted that the respondent made these deductions but did not pay these monies into his pension fund as it is legally obliged to do. This amounted to “pension fraud” and also is an unlawful deduction from his wages.
87. The respondent in their amended response admitted that the sum of £259.76 had been deducted from the claimant’s salary for the months of March and April 2022, and were not paid into the pension fund. This was their error. The respondent accepted liability and agreed to process a payment in the sum of £259.76, and a payment for £25.00 to cover interest. The respondent confirmed this sum has now been paid to the claimant, which he did not dispute.

88. The claimant in his Schedule of Loss revised his claim and increased the deduction claim to the sum of £904.14. The breakdown of this sum is; £211.74 relating to the pension contributions; employer contributions of £519.30; and tax relief loss of £173.10.
89. The claimant in his witness statement complained about the respondent's failure to enrol him onto the NEST scheme until 31 March 2022, and then the pension deductions made for the months of March and April 2022 not being paid into the pension fund. The claimant provided no explanation about his revised calculations claiming £904.14 and on what basis he considered there had been an unlawful deductions made when he did not opt out from the registered pension scheme.

The applicable Law

Equality Act 2010 ("EqA 2010")

90. Section 13(1) of the Equality Act 2010 provides that;
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.
91. Direct discrimination covers less favourable treatment of an individual because he or she associates with a person who has any of the protected characteristics. (Coleman v Attridge Law and anor 2008 ICR 1128)

Comparison

92. Section 23 of the EqA 2010 provides that:
(i) On a comparison of cases for the purposes of section 13 EqA 2010 there must be no material difference between the circumstances relating to each case. In other words, the relevant circumstances of the complainant and the comparator must be either the same or not materially different. Comparison may be made with an actual individual or a hypothetical individual.

Burden of proof (s136 EqA 2010)

93. Section 136 requires the claimant to prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of unlawful discrimination, and it is then for the employer to prove otherwise.

Employment Rights Act 1996 ("ERA 1996")

94. Section 104C(a) provides,
"An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee -
(a) made (or proposed to make) an application under section 80F,
95. Section 104(2) provides it is immaterial whether the employee had the statutory right in question or whether the right had been infringed. However, the employee's claim to the right and its infringement must have been made in good faith.

96. It is sufficient that the employee made it reasonably clear to the employer what the right claimed to have been infringed was. It is not necessary actually to specify the right. s104(3) ERA 1996.
97. As the claimant does not have the two years continuous service to claim ordinary unfair dismissal, the claimant has the burden to prove, that the reason for dismissal was an automatically unfair reason. (Smith v Hayle Town Council 1978 ICR, CA.)

Right to request flexible working

98. Section 80F of the ERA 1996 gives a qualifying employee (but not a worker) a right to apply for flexible working.
99. An employee must have the qualifying period of service namely 26 weeks to make the application.

Unlawful deduction from wages

100. Section 13 of the ERA 1996 provides that;
- (1) An employer shall not make a deduction from wages of a worker employed by him unless—
 - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
101. Under section 24(2) of the Act, where a Tribunal makes a declaration that there has been an unlawful deduction from wages it may order the employer to pay such amount as a Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.

Analysis and Conclusion

Discrimination by association.

Knowledge of disability

102. The first issue the Tribunal had to determine was the issue of knowledge of disability. By email dated 3 April 2023 the respondent conceded that the claimant's wife had a disability at the material time for the purposes of the Equality Act 2010. However, the respondent contended that it did not know and could not have been reasonably expected to know the claimant's wife had this disability.
103. The claimant asserted that on various occasions in his discussions, he informed Mr Miah and Ms Khan about his wife's heart condition and that she had hospital appointments to attend. The Tribunal therefore had to consider whether the respondent knew or ought reasonably to have known that the claimant's wife had a disability.

104. In determining this issue, the Tribunal took into account the following facts;
- (i) the claimant's admission he did not disclose that his wife had a medical condition in his application form or in the interview process;
 - (ii) at no point during his employment did the claimant disclose any documentary medical evidence about his wife's medical condition;
 - (ii) the claimant did not give any specific details about the nature of his wife's hospital appointments;
 - (iii) the claimant's admission that he was not aware that his wife's medical condition was recognised as a disability until after he was dismissed and engaged with ACAS;
105. On the facts, the Tribunal concluded that the claimant did not inform either Ms Khan or Mr Miah that his wife had a heart condition. By simply informing the respondent that he had to attend medical appointments with his wife and/or that he needed to work from home with remote access to look after his children did not put the respondent on notice that his wife had a disability. The Tribunal was also of the view that to inform an employer of a medical condition or diagnosis does not necessarily put the employer on notice that the individual has a disability. It was incumbent on the claimant to have been transparent and to have provided some form of documentary medical evidence in the circumstances.
106. The Tribunal also considered whether the respondent should have asked more questions of the claimant to enquire why his wife was having to attend hospital appointments. On the facts the Tribunal concluded that there were no reason for the respondent to make further enquires in the circumstances. The Tribunal accepted Ms Khan's evidence and explanation.
107. The Tribunal therefore concluded that in the circumstances the respondent did not have knowledge either actual or constructive of disability or that it could have been reasonably expected to know that the claimants wife had a disability. Accordingly, the complaint for disability discrimination fail at the first hurdle.
108. Even, if the Tribunal had found that the respondent had constructive or implied knowledge of the claimant's wife's disability, this complaint would have failed for the findings of fact made by the Tribunal namely;
- (i) he (i.e. claimant) did receive training on the CaseWare accounting software;
 - (ii) he was not forced to work from the office on 14-16 February 2022 when others did not have to do so;
 - (iii) he was not given access to remote working because it was a term of his employment to work from the office;
 - (iv) his desk was moved to manage his performance not to isolate him;
 - (v) he was dismissed for his performance and conduct at the meeting on 23 June not because of his wife's disability.

Automatic Unfair Dismissal

109. The claimant has advanced his dismissal claim on the basis the reason or principal reason for his dismissal was because he proposed to make a flexible working application, which if proven will render his dismissal to be automatically unfair pursuant to s104C(a) of the Employment Rights Act

1996.

110. The claimant's pleaded case as noted in the agreed List of issues is that on 22 June 2022 in his discussion with Mr Miah he told him he was going to check his legal options for making such an application.

111. The Tribunal noted that at the date of his dismissal, the claimant had acquired the legal right to make a formal application for flexible working. This right was acquired on 6 June 2022, having been continuously employed for 26 weeks being the required qualifying period as required by s80F ERA 1996.

112. The Tribunal had to first determine did the claimant in his discussion on 22 June 2002 with Mr Miah tell him that he was proposing to exercise his right to make an application for flexible working. At Paragraph 68, the Tribunal has made its findings of fact. The Tribunal concluded that from the discussions held the claimant did not say that he had made or was proposing to make a request for flexible working in accordance with the rights conferred by s80 ERA 1996. The reasons for this conclusion are as follows;

- (i) By the claimant's own evidence the discussion held was about wanting access to work from home on days his wife was to attend hospital appointments. The claimant did not make any reference to his statutory right to flexible working or that he was proposing to make such an application;
- (ii) Even if the claimant had said that he was going to "*check his legal rights about these issues*" this would not have put the respondent on notice that the claimant is either making or proposing to make a request for flexible working.
- (iii) The claimant's appeal letter against his dismissal made no reference to the claimant's right to make a request for flexible working or that he was either considering or intending to make such an application. Also neither does it state that in that discussion the claimant asserted his right about flexible working. The Tribunal concluded this letter gives weight to the respondent's contention that the claimant formulated this claim after taking advice from ACAS following his dismissal, and that at no time during his employment did the claimant make any request for flexible working. The first reference to this statutory right was made in the Claim Form. This contention is further supported by the claimant's own admission that he was not aware of his legal rights until he first made contact with ACAS after his dismissal, which then led to him making this claim.

113. It therefore follows this complaint must fail, as the claimant has not shown that on 22 June 2022 he had or proposed to exercise his right to make a request for flexible working.

114. Although, it was not necessary to do so, the Tribunal was satisfied that even if the claimant had shifted the burden to the respondent the Tribunal was satisfied the claimant's performance and conduct (including at the

dismissal meeting) was the reason for his dismissal.

Unlawful deduction – pension contributions

115. On the facts, the respondent admitted they made deductions from the claimant's salary for the months of March and April 2002. These deductions related to pension deductions as he had been auto-enrolled on the NEST pension scheme. The respondent was legally required to make these deductions. The claimant did not claim or provide any evidence that he had opted out from the pension scheme. In this respect the respondent did not make an unauthorised deduction from the claimant's wages.
116. At law, the failure by the respondent not to pay the deductions made to the pension provider does not amount to an unlawful deduction. This failure is maladministration by the respondent for which the Tribunal does not have jurisdiction. This breach is not an unlawful deduction from wages. Accordingly, the complaint is misconceived and fails.
117. For the reasons stated above the claimant complaints are not well founded and are dismissed.

Employment Judge Bansal
Date 2 May 2024

JUDGMENT SENT TO THE PARTIES ON
3 May 2024

FOR THE TRIBUNAL OFFICE

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ANNEX A
AGREED LIST OF ISSUES

1. Direct discrimination by association (s13 Equality Act 2010)

1.1 Did the respondent do the following things:

1.1 Denying the claimant remote access in order for him to be able to work from home.

1.2 Rejecting the claimant's request to work from home.

1.3 Changing the claimant's desk in the office to a more isolated position at the start of May 2022. (the person responsible was Miss A Khan)

1.4 Instructing the claimant attend work on certain occasions (14-16 February 2022) when others did not have to do so, even when there was no running water. The person responsible was Ali Miah.

3.5 Not allowing the claimant to undertake training in CaseWare accounting software. (Mr Miah and Ms Khan orally refused to book him the training, at a meeting in early March 2022).

3.6 Dismissing the claimant on 23 June 2022.

4. Was that less favourable treatment?

5. If so, was it because of the Claimant's association with his wife?

4. Did the respondent know or could it reasonably have been expected to know that the claimant's wife had a disability? If so, from what date?

2. Automatic Unfair Dismissal - (s104c Employment Rights Act 1996)

2.1 Was the claimant dismissed?

2.2 If so, was the reason or principal reason for dismissal that the claimant proposed to make a flexible working application under s80F Employment Rights Act 1996?

3. Unauthorised Deductions – Pension Contributions

3.1 Did the respondent make unauthorised deductions from the claimant's wages in respect of pension contributions?

3.2 Is so, how much was deducted ?

3.3 Is the claimant due any sums, if so, how much?