



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Tyrone Maison

v

Ikea Distribution Services Limited

Heard at: Norwich (by CVP)

On: 16, 19, 20, 21 22, 23 February 2024

Before: Employment Judge Postle

Members: Mrs A Buck and Ms Lawrence-Doig

Appearances

For the Claimant: In person

For the Respondent: Miss Callen, Counsel

RESERVED JUDGMENT

1. The Claimant's Claim that he suffered direct discrimination and harassment because of the protected characteristic of disability is not well founded.
2. The Claimant's Claim that he was unfairly dismissed is not well founded.

REASONS

Background

1. The Claimant brings claims to the Tribunal under the Equality Act 2010 for the protected characteristic of disability. It is accepted by the Respondent the Claimant was disabled as defined by Section 6 of the Equality Act 2010 by reason of Post Traumatic Stress Disorder at the time of the events the Claim is about. The Claimant also has anxiety and depression, these appear to be the symptoms of the condition of Post Traumatic Stress Disorder.
2. Within the Equality Act 2010 ("EqA") the Claimant has claims for direct discrimination and harassment. These were set out and identified before Employment Judge George on 20 February 2023 at the Case Management Hearing.

3. Subsequently, the Claimant was dismissed on 30 March 2023 and the reason advanced by the Respondent possibly is capability, in the alternative some other substantial reason and misconduct.

The Hearing

4. In this Tribunal we heard evidence for the Respondent from:
 - Mr Peter Mewes, Warehouse Manager;
 - Mrs Sharron Bentley, Warehouse Team Leader;
 - Mrs Valerie Walker, People and Culture Generalist responsible for HR matters;
 - Ms Rachel Pollard, Warehouse Manager; and
 - Mr Matthew Webb, People and Culture Manager.

All giving their evidence through prepared Witness Statements.

5. The Claimant gave evidence, again through a prepared Witness Statement. He called no further evidence.
6. The Tribunal had the benefit of a Bundle of documents consisting of 592 pages.

Credibility

7. The Tribunal, notwithstanding the Claimant's mental health issues found the Claimant's recollection of events on many occasions unreliable and having a propensity to rely on the state of his mental health or his controlling partner in respect of certain events, such as the Christmas present for Mrs Bentley and other matters.
8. Whereas the Tribunal found the Respondent's Witnesses clear, consistent, honest and reliable in their recollection of events.

Findings of Fact

9. The Respondent company is the Distribution Division of the National Ikea Group with a large distribution facility in Peterborough. The Claimant worked primarily as a Bander as part of a Team called the Fluid Tip Team. The group consists of a Tipper, a Bander and two Put Away Drivers. What this means is goods would arrive at the Distribution Centre and be removed from the vehicles on the pallets by the Tipper. The Bander would work alongside the Tipper to assist unloading where appropriate. The purpose of the Bander is to determine whether the unloaded pallets needed to be made safe for storage and pallets would then be banded where necessary. Goods would then be taken from the loading area into storage by Put Away Drivers who operated the fork lift trucks. Before the Claimant reported to Mrs Bentley, who was the Warehouse Team Leader, the Claimant was employed on the night shift reporting to the Night Shift Team Leader Mark Beech.

10. Throughout 2020 thought was given to the Claimant to assist the Claimant with a traumatic event from which he had suffered in the past prior to joining the Respondents. Apparently the Claimant was attacked some years ago. Recently the Claimant discovered that his attacker had been released from prison. Apparently this caused the Claimant some anxiety and resulted in the Claimant having considerable time off work.
11. As a result of the above, after consulting with the Claimant and seeking Occupational Health advice, the Claimant transferred to the Day Shift (Occupational Health Report at page 142). It was decided that the Claimant would report to Mrs Bentley on the Day Shift and as Mrs Bentley was a qualified Mental Health First Aider it was thought Mrs Bentley was his ideal Team Leader.
12. Originally the Claimant was scheduled to work mornings, 0600hrs until 1400hrs and the expectation was the Claimant would assume rotating Day Shifts, 0600hrs to 1400hrs and 1400hrs to 2200hrs, if he were to remain on the Day Shift.
13. Originally the expectation was that the Claimant would return to the Night Shift, this was to take place at the end of December 2020. However, the Claimant made it known that the Day Shift allowed him more time to spend with his family and was beneficial to his wellbeing. Therefore, in November 2020 it was decided with the Claimant's consent, that there would be a trial of the Claimant working rotating morning and afternoon shifts. It was never the case Mrs Bentley compelled the Claimant to work afternoon shifts. It was also thought that working on a rotating shift pattern would be more ideal and consideration would nevertheless be given to making adjustments if the Claimant was unable to work at particular times.
14. Mrs Bentley was not aware of any issue with the Claimant in difficulty taking breaks, or taking his medication at any particular time. If there was an issue, then Mrs Bentley would have happily sorted out any problems taking breaks or medication.
15. Around 21 December 2020, the Claimant contacted Mrs Bentley by text (at page 312) enquiring if he could complete the Quality Checking tasks as he wanted to be on his own. Mrs Bentley responded that this was not a problem. In fact, it is recorded in the Claimant's Work Schedule (at page 288) and shows the Work Schedules to the end of January 2021 which the Claimant would have been assigned had he not gone off sick.
16. In December the Respondent provides Christmas lunch for all staff and they receive a voucher. The meal is prepared on site. The vouchers are allocated to Team Members. As technically the Claimant was on permanent Night Shift and only temporarily assigned to the Day Shift, his lunch voucher would have been passed to the Night Shift Team Leader.
17. It is clear Mrs Bentley went over and above the role of Team Leader in supporting the Claimant and she had frequent discussions with the Claimant about his wellbeing. Evidence of this is the Claimant actually

buying Mrs Bentley a Christmas present to thank her for the support she was giving the Claimant.

18. The Tribunal were not of the opinion that an alleged incident which the Claimant relates on 7 January 2021 ever took place, or if it did, not in the presence of Mrs Bentley. Mrs Bentley certainly did not make any derogatory remarks to the Claimant such as *"be a man"* or *"what kind of a man cannot get his words out"*. What is accepted is the Claimant approached Mrs Bentley for a chat and they went to the Health and Wellbeing room to discuss matters privately, at which the Claimant was alleging Mrs Bentley had in some way breached his trust by allegedly telling other colleagues about the Claimant's personal circumstances. When the Claimant became agitated Mrs Bentley told him that she was leaving to obtain the assistance of a Warehouse Manager as she was concerned by the way the conversation was going.
19. Sometime in January 2021, the Claimant approached Mrs Bentley during the afternoon shift and enquired if she knew anyone that lived near him as he was looking for a lift. Mrs Bentley enquired with Mr Fletcher if he knew anybody who lived close to the Claimant who might be able to give him a lift. Although he did not live near the Claimant (Mr Fletcher) he did say he was happy to give him a lift and that information was passed by Mrs Bentley to the Claimant.
20. On a day when Mrs Bentley was not shift in January 2021, David Marsh, in her absence and on her behalf, was carrying out a Shift briefing and he took it upon himself to deliver a Covid briefing stating to all person present that there should be no car share arrangements at that time. When Mrs Bentley became aware of this she was surprised as this was not the Respondent's position on car sharing during Covid. Mrs Bentley therefore took it upon herself to re-brief the Team and that was that car sharing arrangements could still be in place so long as they exercised the arrangement with caution. It was during the course of this briefing that the Claimant informed Mrs Bentley that he did car share which surprised her as she was not under the impression the care share arrangement with Mr Fletcher was a long term arrangement. Accordingly, Mrs Bentley went back to Mr Fletcher to clarify this and he confirmed it was not a long term arrangement, but a one off to help a Team Member out. Mrs Bentley certainly did not tell Mr Fletcher he could no longer give the Claimant a lift, or in any way discourage Mr Fletcher from providing a lift. Clearly it was a matter for Mr Fletcher to decide whom he would give lifts to and whether as a one off or a regular arrangement.
21. On 12 January 2021, the Claimant left the shift early informing Mrs Bentley that he had received a message from his sister that his father had unfortunately passed away. The Claimant was not in any way chastised or disciplined for this and Mrs Bentley was happy to allow him leaving the shift early.

22. On 15 January 2021, the Claimant approached Mrs Bentley during an afternoon shift requesting again to leave early. Apparently the Claimant said he was uncomfortable about going home in the dark. Mrs Bentley was aware that in order to work on the morning shifts the Claimant would be travelling in the dark as well. Mrs Bentley asked the Claimant why travelling to work in the dark is not an issue in the morning. Apparently the Claimant reacted angrily to the question being asked. He said he could not afford taxis so an early shift would be better for him. The Claimant mentioning that there had been a recent stabbing in that area of Peterborough and this heightened his anxiety. There was then some discussion about the possibility of the Claimant cycling or taking a taxi, but apparently this was definitely not an option for the Claimant. The Claimant was therefore permitted to leave early on the afternoon shift.
23. On 15 January 2021, given what had transpired, Mrs Bentley emailed Ms Walker summarising the event (at page 171). That was the last day the Claimant was in work.
24. A Welfare Meeting subsequently took place with the Claimant on 28 January 2021 with Mr Webb, the People and Culture Manager (at pages 188 – 191). During the course of this meeting, which was Chaired by Mr Mewes the Warehouse Manager, the Claimant raised a Grievance making various allegations against various individuals and suggesting he could not return to the Team with which he was presently working (at page 191).
25. The Claimant then remained off sick during this period due to stress (at page 220) and an Outcome to his Grievance was sent to him on 11 March 2021 (at pages 234 – 235).

The Grievance

26. The Claimant's written Grievance was initially addressed to Barbara Harrison and ultimately referred to Mrs Pollard. It was undated and received around 12 February 2021 and acknowledged by letter of 15 February 2021.
27. Mrs Pollard arranged a meeting with the Claimant on 25 February 2021, the Notes of that meeting are at pages 215 – 218. The Claimant was asked to explain his Grievance, which his main and only focus was Mrs Bentley. He said that Mrs Bentley failed to provide him with the necessary support and dissuaded Mr Fletcher from giving a lift to him.
28. Following the meeting with the Claimant, Mrs Pollard interviewed Mrs Bentley and Mr Fletcher. Notes of that meeting are at pages 221 – 227. Having considered what the Claimant said and the information from Mrs Bentley and Mr Fletcher, there was no basis to uphold the Grievance.
29. Mrs Pollard communicated her findings at a meeting on 10 March 2021 (at pages 230 – 233). At that meeting for the first time the Claimant saying that Mr Mullan told him that Mrs Bentley had spoken to Mr Fletcher. It was

not felt necessary to go back to Mr Mullen. In Mr Fletcher's clear Statement he had made it clear there was no arrangement for permanent car sharing.

30. As to the suggestion that Mrs Bentley was smirking outside the meeting room while the Grievance Outcome was communicated, the Claimant could not have observed this as the meeting was held in a meeting room in private. Furthermore, at no meetings with the Claimant did they ever notice the Claimant self-harming. It is noted that had that been the case they would not have continued with the meeting.
31. The Claimant had requested a meeting with Mr Mewes and Ms Harrison by email of 19 January 2021. It was apparent during the course of that meeting the Claimant had strong views regarding Mrs Bentley. Particularly that she was interfering with the lift share arrangement. What is clear is the Claimant was not self-harming during this meeting. There was a break down during meeting because the Claimant was agitated. The Claimant at one stage did start to shake but made it clear he was happy to proceed. During the course of that meeting it was never said that the Claimant would have to work with Mrs Bentley.
32. Originally when the Claimant went on Day Shift, Mrs Bentley was assigned to the Claimant due to her Mental Health qualifications and her ability to support other workers. As that relationship had broken down the Claimant was allocated to another Team Leader, Mr Mullen.
33. The Claimant was never pressurised into working with Mrs Bentley after it became apparent the relationship had broken down.
34. The Claimant Appealed against the outcome of his Grievance. That was conducted by Ms Harrison. Ms Harrison's preference was to meet the Claimant face to face. Several dates were offered to the Claimant and the support of the employer's Assistance Programme was offered. However, the Claimant refused to attend, he said it was on his Doctor's advice. The Outcome letter was sent to him following Ms Harrison gathering Statements from Mr Mewes, Mr Mullen and also re-interviewing Mrs Bentley. Ms Harrison concluded on the evidence and Statements she had taken there was insufficient grounds to uphold the Claimant's Appeal.
35. The basis of her decision was set out in an Outcome Letter to him of 2 April (at pages 265 – 268).
36. Once the Claimant had been absent from work for a period of around two months, an Occupational Health Referral was made and a Telephone Appointment scheduled for 22 March 2021 (at page 238). Apparently the Claimant did not answer the Occupational Health Advisor's call when they attempted to contact him (at page 241). Further attempts were made to refer the matter to Occupational Health in an attempt to support the Claimant (at page 245). These were refused. The Claimant was also encouraged to use the Support Services of Retail Trust (this is a paid for

Benefits package within Ikea for emotional and financial wellbeing and support).

37. The Claimant was then referred to Occupational Health a second time and the meeting was to take place by telephone on 13 May 2021 (at pages 272 – 273). It was confirmed the Claimant suffered Post Traumatic Stress Disorder as well as anxiety and depression. The Report confirmed that the Claimant was not fit to return to work and recommended that Ikea seek to address the Claimant's work related issues. However, the Claimant's Grievance Appeal had been dealt with and an Outcome issued at this point. Occupational Health were therefore unable to predict when the Claimant would be fit to return to work. The Claimant continued to provide Fit Notes linked to his absence (at pages 487 – 494). The last Fit Note for the Claimant provided prior to his termination date was 19 April 2021.
38. During this period the Claimant lodged an Employment Tribunal Claim against Ikea making various allegations of discrimination against the company and individual colleagues. The Claimant's absence continued to be monitored given he remained off sick and had done so since early 2021. There was then a review of the case when Mr Webb took on Management responsibilities for the Claimant. There was discussion about a third Occupational Health Review Meeting, but the Claimant refused to engage with the Respondents in respect of this. It appears various attempts were made by the Claimant's previous Manager and HR Team to contact the Claimant to check on his general wellbeing without reply.
39. As at 24 July 2022, the Claimant had now been absent from work for roughly 18 months. He had stopped providing up to date Fit Notes and was not contacting the Respondents. Miss Buckley of HR wrote to the Claimant on 24 July 2022 asking the Claimant to provide Fit Notes and also seeking to arrange Welfare Meetings. The Claimant on 16 November 2022 alleged that there had been no contact with Ikea since early 2021.
40. The Claimant was therefore written to on 29 November 2022 (at page 518) asking him to discuss his health and the possibility of returning to work. The Claimant was also emailed directly, repeating the same message on 2 December 2022 (at page 519).
41. On 14 December 2022, the Claimant responded to Mr Webb's correspondence confirming that he would "*never set foot on those premises ever again*" (at page 520).
42. Mr Webb therefore wrote to the Claimant on 20 December 2022 (at page 555), inviting him to a meeting to discuss both his ongoing absence and lack of Fit Notes, which meant his absence was classed as unauthorised. No response to that letter was received. Mr Webb again wrote to the Claimant on 20 January 2023 (at page 523), essentially repeating his initial message and asking the Claimant to attend the meeting which could be Chaired remotely if the Claimant wished. Again, this was to discuss his absence. The Claimant was given until 31 January 2023 to respond and

was warned that if he failed to respond Mr Webb would consider commencing a formal process to terminate the Claimant's employment.

43. Mr Webb wrote to the Claimant a final time on 27 January 2023 (at page 524), reiterating previous messages and checking that the Claimant had received the letters referred to above and giving the Claimant every chance to respond.
44. The Claimant did respond finally to the correspondence in an email of 1 February 2023 (at page 557), stating,

“Can Ikea stop sending me ridiculous letters, I will not set foot on that site ever again”.

As well as,

“I will never meet anyone from Ikea to discuss anything with them”.

Finally, the Claimant stated that,

“I do not want Ikea to contact me again”.

45. It was clear that the Claimant was not willing to meet to discuss his absence and the fact that he did not want to return to work at the Respondents. Therefore Mr Webb wrote on 15 February 2023 (at page 526) informing the Claimant that in the light of his correspondence, the Respondents wished to meet with him on 22 February 2023 to discuss his ongoing absence. It was made clear to the Claimant that the Respondents would be willing to hold a meeting remotely, or at a neutral location to assist him.
46. The Claimant did not attend the meeting on 22 February 2023. Given the Claimant's previous correspondence setting out his clear position around both working for the Respondents and attending any meeting, Mr Webb made the decision to hold the meeting in his absence. It was clear the Claimant was not going to engage with Mr Webb or anyone else at the Respondents despite being given ample opportunity to do so.
47. Therefore, based on the information available to Mr Webb he took the decision to terminate the Claimant's employment. A copy of the terminate setting out the rationale is dated 28 February 2023 at pages 527 – 529).
48. The rationale being that the Claimant had been absent from work for a period of two years, had stopped providing Fit Notes and had been absent without leave for a period of around five months which could be considered gross misconduct. The Claimant point blank refused to engage with the Respondents and had confirmed he had no intention of returning to work. The Claimant was, despite his actions, paid in lieu of notice. The Claimant was advised of his right of Appeal but did not Appeal the Outcome.

The Law

49. Direct Discrimination – s.13 EqA 2010

13. Direct Discrimination

- (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.

50. Section 23 EqA 2010 provides,

23. Comparison by reference to circumstances

- (1) On a comparison of cases for the purposes of s.13, 14 and 19, there must be no material difference between the circumstances relating to each case.

51. The burden is on the Claimant to prove with evidence, from which the absence of a reasonable explanation the Tribunal could conclude that discrimination has occurred.

52. Where multiple allegations are raised as evidence of discrimination, the correct approach is for the Tribunal to find the primary facts about the incidents in question and then to look at the totality of those facts, including the employer's explanation to determine whether the acts complained of were on discriminatory grounds.

53. In looking at the overall picture, it is also necessary to consider the inherent probability of what a Witness is saying and how well it fits with the objective facts. In deciding where the truth lies, the Tribunal should make some overall assessment of Witnesses which includes taking account of things such as any demonstrable lies or exaggerations.

54. Furthermore, it is for the Claimant to show that a hypothetical comparator would have been treated more favourably.

55. The Treatment must be because of a protected characteristic. Less favourable treatment than that afforded to a comparator is not sufficient to establish direct discrimination unless there is something more from which the Tribunal could conclude the difference was because of the Claimant's protected characteristic.

56. Harassment related to disability – s.26 EqA 2010

26. Harassment

- (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.
- (B) In deciding whether conduct shall be regarded as having the effect referred to above, the following must be taken into account-
 - (a) the perception of B;
 - (b) the other circumstances of the case; and
 - (c) whether it is reasonable for the conduct to have that effect.
- (4) The legislation is specifically designed to focus on three elements-
 - (a) unwanted conduct;
 - (b) having the purpose or effect of it-
 - (i) violating the Claimant's dignity, or
 - (ii) creating an adverse environment for it.

57. Unfair Dismissal – s.94 and 98 Employment Rights Act 1996

94. The right

- (1) An employee has the right not to be unfairly dismissed by his employer.

58. S.98 defines unfair dismissal and sets out potentially fair reasons, namely: conduct, capability or some other substantial reason.

98. General

- (4) Where the employer has fulfilled the requirements of subsection (1), i.e. a potentially fair reason to dismiss, the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-
 - (a) depends 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
 - (b) shall be determined in accordance with equity and the substantial merits of the case.

59. The principal reason advanced by the Respondents is capability. It does appear that the Claimant does not challenge that. The Tribunal would

then move on reasonableness of that decision. Clearly it is not for the Tribunal to substitute its own view as to what they would do, whether on the fact the decision to dismiss was fair and reasonable i.e. within the band of a reasonable response of a reasonable employer. That being so, after it is established that the Respondent had a genuine belief in the Claimant's capability, namely, to perform further work for the Respondents.

The Tribunal's Conclusions

The s.26 Harassment Claim

60. The Tribunal wholeheartedly agreed with Counsel's submissions that the Claimant failed to show that the alleged treatment was related to his disability in respect of any alleged harassment. It is clear that the Claimant has failed to establish any underlying facts in support of the allegations.
61. It is also true that the only allegation that has any where near a factual basis was when Mrs Bentley is alleged to have questioned the Claimant's fear of being stabbed. Namely, when Mrs Bentley asked the Claimant about his inability to travel home in the dark after a late finish as he would be travelling in the dark on a morning shift. She did this to try and understand what the problem was. Clearly such conduct when viewed objectively cannot have the effect the Claimant asserts because she did not question his fear of being stabbed, but the circumstances surrounding his difficulty in travelling in the dark.
62. *Allegation 1*

Did Sharron Bentley make comments on 7 January 2021 specifically that the Claimant "*should be a man*" and "*what kind of a man cannot get his words out*"?
63. The Tribunal fully accept that Mrs Bentley did not say anything like what the Claimant asserts. The Tribunal do not accept there is any foundation whatsoever in this allegation and he certainly does not raise it in his ET1.
64. Therefore that Claim fails.
65. *Allegation 2*

Did the Respondent through Sharron Bentley require the Claimant to work afternoon shifts?
66. This appears as an allegation of both harassment and direct disability discrimination. It was agreed if the Claimant wanted to stay on the Day Shift he would need to work normal rotation of mornings and afternoons. The Claimant understood this. It is clear Mrs Bentley had regular

communications with the Claimant and he was happy to work afternoon shifts. The Respondents were willing to allow the Claimant to leave early so it cannot be unlawful harassment related to the Claimant's disability. Nor can it be detriment under s.13.

67. *Allegation 3*

Did Mrs Bentley refuse the Claimant's request to be allocated a task other than Banding?

68. This appears to be both harassment and s.13 direction discrimination. The first point to make is that Banding was the job for which the Claimant was required to do given his disability. He asked in December 2020, if he could work on Quality the next day - there was no problem. The Work Schedule for the Claimant shows that he would have rotated to other work had he remained at work after 16 January 2021.

69. In the above circumstances that cannot amount to harassment since in any event his disability restricted the duties he could do. It was perfectly reasonable for him to be offered rotations at various times, which the Work Schedule confirms.

70. It therefore cannot be unwanted conduct. Furthermore, it cannot be a detriment for him to work as a Bander as it was the job he was required to do.

71. *Allegation 4*

On 15 January 2021, did Mrs Bentley question the Claimant's fear of being stabbed and belittle the Claimant's concerns?

72. This Claim has already been dealt with above.

73. *Allegation 5*

On 15 January 2021, did Sharon Bentley inform a colleague that providing the Claimant a lift was a one off when she had told the colleague otherwise?

74. On 15 January 2021, there was some confusion over the company stance on lift sharing. There was the enquiry from Mrs Bentley about whether anybody could give the Claimant a lift. It transpired Mr Fletcher would and that was to be a one off and not a permanent arrangement. Mrs Bentley never instructed Mr Fletcher could or could not offer lifts to the Claimant, or anyone else.

75. This cannot amount to harassment and in any event it was the Claimant's responsibility to get to and from work.

76. *Allegation 6*

On 18 or 25 February 2021, did Peter Mewes speak to the Claimant in an aggressive manner during the course of the meeting? Did Mr Mewes deter the Claimant from bringing representation and failed to stop the meeting despite an obvious deterioration in the Claimant's wellbeing?

77. There was some dispute about the date, it probably refers to 28 January which was the meeting between Mr Mewes and Ms Walker. It is clear from the notes representation was discussed and a break was taken. When they returned to the meeting the Claimant was asked if he wanted to continue, he did. When they noticed the Claimant was shaking they then asked again if he was fit to continue. The Claimant confirmed he was. Matters were then discussed. The Claimant said he was not wishing to return to Mrs Bentley's Team. The meeting was adjourned with a view to resuming in February, by which time the Claimant had commenced sick leave. Neither Mr Mewes nor Ms Walker were aware of the suggestion that the Claimant was self-harming.

78. That Claim simply fails on the facts.

79. *Allegation 7*

Did Mrs Bentley on 25 February 2021 smirk at the Claimant while a Grievance Outcome was being delivered?

80. This Claim simply fails on the facts as Mrs Bentley was not present at the meeting. It is simply an untruth by the Claimant.

81. *Allegation 8*

By email, did Mrs Walker tell the Claimant that he was being aggressive in the meeting on 28 January 2021 and state that he may need to continue to work with Mrs Bentley should he return to work?

82. The Notes of the meeting do not show Mrs Walker suggesting the Claimant was aggressive and there is no email from Mrs Walker or anyone else to the Claimant alleging he was aggressive. He was described as being agitated. Originally Mrs Bentley was assigned to the Claimant as she was considered the most suitable to support the Claimant. It is clear once it became apparent that the relationship with Mrs Bentley had broken down, the meeting was stopped.

83. Direct Discrimination Claim

Did Mrs Bentley not issue the Claimant with an invitation to the Respondent's 2021 Christmas party?

84. The first point to make is it was not a party, it was a work's Christmas lunch. There was no detriment in any event as the Claimant did get a voucher for the event. He attended the Christmas lunch. The treatment

clearly was not because he was disabled, but because originally the Claimant was on the Night Shift where the voucher was sent and now the Claimant was temporarily assigned to a different Team Leader on the Day Shift.

85. *Allegation 9*

Did Mrs Walker and Mr Mewes continue the meeting on 28 January 2021 when they could observe the Claimant self-harming?

86. This has already been dealt with above and there was no indication that the Claimant was self-harming.

87. *Allegation 10*

Did the method of recording the Minutes of the meeting on 28 January 2021 inaccurately fail to record details of the break?

88. Again, the meeting was on 28 January and not because of the Claimant's disability. That the Minutes have been mis-recorded, there is no evidence that the Minutes have been altered. There was clearly a break.

89. *Allegation 11*

Did Mrs Pollard and / or Mrs Harrison fail to deal appropriately with the Claimant's Grievance and / or Appeal by failing to speak to appropriate Witnesses?

90. In the facts of this case are the Claimant's Grievance letter stated that Mrs Walker and Mr Mewes were not really the Claimant's main concern, his problem was with Mrs Bentley. That was confirmed in the meeting with Mrs Pollard on 25 February 2021 when he was asked who he wanted to raise a Grievance against and his reply was Mrs Bentley.

91. On that basis it was entirely appropriate for Mrs Pollard to interview Mrs Bentley and Mr Fletcher since one of the Claimant's Grievances was with her over the lift arrangement.

92. With regard to the Grievance Appeal, he raised matters with regard to Mrs Bentley and one matter relating to Mr Mewes. Therefore it was entirely appropriate in the circumstances to interview Mrs Bentley and obtain a Statement from Mr Mewes.

93. There clearly is no direct discrimination on the facts.

94. Unfair Dismissal Claim

95. It is quite clear that the reason for dismissal was the Claimant's capability. At the stage of his dismissal in February 2021 there was absolutely no evidence that the Claimant would return to work under any circumstances. He was refusing to engage with anyone at the Respondents and he repeatedly maintained he would not return to work under any

circumstances. Furthermore, he remained unfit for work and he did not want to engage with the Respondent or see an Occupational Health Advisor. He was therefore not able to perform the job for which he was employed for. At the time of the dismissal he was not capable of work, he was not wanting to engage and maintained a stance that he would not return.

96. In those circumstances the Respondents were left with no alternative but to fairly dismiss the Claimant.
97. The Claimant was offered the opportunity to Appeal but he failed to do so. Had there been any matters the Respondents had not taken into account, they could have been vocalised at that stage.
98. In all the circumstances therefore the decision to dismiss was fair.

Employment Judge Postle

Date: 18 June 2024

Sent to the parties on: 26 June 2024

For the Tribunal Office.

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 is likely to be payable in most but not all circumstances. 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/>