EMPLOYMENT TRIBUNALS

Claimant: **Mr H Vyas**

Respondent: **Atos International Services Ltd**

Heard at: London Central (in person) **On:** 26, 27 June, 1, 2, 3 July 2024 (3 July 2024 in chambers)

Before: Employment Judge B Smith (sitting with members)
Tribunal member Z Darmas
Tribunal Member T Harrington-Roberts

Representation
Claimant: Mr A Sendall (Counsel)
Respondent: Mr T Cordrey (Counsel)

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The following complaints of direct disability discrimination were not presented within the applicable time limit. It is not just and equitable to extend the time limit:

   (i) That Mr Tilbury failed to organise a promotion panel for the claimant from 10 February 2021 onwards (a previous manager, Mr Ingleby having agreed to do so) because of his cardiac condition and/or Type II diabetes; and

   (ii) Mr D Tilbury recruited Alex Kim (announced 5 January 2022) as the Head of Analysts and Adviser Relationships in North America without the Claimant's involvement because of the Claimant's cardia condition and/or Type II diabetes.

   Those complaints are therefore dismissed.

2. The complaint of direct disability discrimination about the claimant's dismissal on 2 February 2023 is not well-founded and is dismissed.

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

4. The complaints of harassment related to disability were not presented within the applicable time limit. It is not just and equitable to extend the time limit. The complaints are therefore dismissed.

5. The complaint of victimisation is not well-founded and is dismissed.

6. The complaint of unfair dismissal is not well-founded and is dismissed.

Employment Judge Barry Smith
8 July 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

12 July 2024
.....

.....
FOR THE TRIBUNAL OFFICE

REASONS

Introduction

1. The claimant was employed by the respondent from 12 July 2016 until his dismissal for reasons of redundancy on 2 February 2023. His latest role was as Global Banking Financial Services and Insurance Head Analyst and Advisor. The respondent provides services relating to cybersecurity, cloud and high-performance computing across a range of industries in 71 countries.

2. The claimant brings claims of:
   (i) Direct disability discrimination;
   (ii) Failure to provide reasonable adjustments;
   (iii) Harassment related to disability;
   (iv) Victimisation; and
   (v) Unfair dismissal.

3. A detailed procedural history can be found in the respondent's opening note. In summary, the claimant presented his first claim on 24 November 2022 alleging various acts of disability discrimination. Acas conciliation for the first claim started on 13 September 2022 and ended on 25 October 2022. The second claim, alleging unfair dismissal, was presented on 20 March 2023. Acas conciliation for the second claim started on 26 February 2023 and ended on 7 March 2023.

4. By order of EJ Burns dated 5 June 2023 the claims were to be heard together.

5. The claims were at various stages clarified amended as set out in the previous case management orders.

6. Various aspects of the claims were withdrawn at various stages, such as after a deposit order was made by EJ McKenna, and during the final hearing. These have been dealt with by way of separate judgments. In order to maintain a consistent numbering system, some allegations are struck through in these reasons to reflect withdrawn claims.

7. The scope of the claims to be determined by the tribunal at the final hearing was as set out in an agreed list of issues that the tribunal adopted. This can be found at Annex A to these reasons. The parties confirmed at the start of the hearing that this accurately reflected the claims made and that there were no applications to amend the claims.

Procedure, documents, and evidence heard

8. The parties were represented by counsel throughout the hearing.

9. The tribunal permitted the claimant the reasonable adjustments asked for, namely regular breaks and use of a laptop to access the digital bundle. The tribunal confirmed that the breaks were of sufficient length during the hearing. No issues about reasonable adjustments were raised during the hearing. No adjustments were required by the respondent's witnesses.

10. The claimant and the respondents witnesses gave evidence under affirmation and were cross-examined.

11. The agreed documents were:

    (i) Final hearing bundle (559 pages);

    (ii) Final supplementary bundle - claimant (101 pages);

    (iii) Mitigation bundle (238 pages);

    (iv) Witness statement bundle (82 pages);

    (v) Chronological table of detriments;

    (vi) Respondent opening note;

    (vii) Cast list;

    (viii) Chronology;

    (ix) Agreed timetable;

    (x) Respondent's supplementary bundle (92 pages).

12. The Respondent's supplementary bundle was admitted in evidence without objection by the claimant. These documents arose from additional disclosure during the course of the hearing and there was no prejudice to the claimant from us taking them into account.

13. The tribunal took into account those documents which the parties and witnesses referred to during the course of the hearing (and the witness statements) in accordance with the normal practice of the Employment Tribunals. The parties were made aware of this from the outset and both parties indicated specific pages for the Tribunal to read. The tribunal ensured that the parties were aware of documents it had read where it was unclear if these had been specifically raised during the hearing.

14. Both parties made oral submissions at the close of the evidence. Both parties made written submissions. We have only resolved the issues of fact necessary to make our decisions and the parties invited us to make the specific findings of fact that they relied on.

15. The key issues in the claimant's case included the allegation that his line manager, Mr Tilbury, had treated him badly because of his disabilities, and that Mr Tilbury had selected him for redundancy for that reason. The claimant says that this ultimately tainted the redundancy process. The claimant also said that the redundancy was a sham redundancy. Also, the claimant said that it was procedurally unfair because the respondent should have known that his role would be made redundant by hiring another – Ms Alex Kim – into a regional role in the USA. The claimant says that it was unfair that he was not given the opportunity to apply for that role, or be simply put into it, by virtue of the redundancy consultation not stating until after she had been hired.

16. The specific alleged detriments, in addition to the dismissal, were that:

    i. Mr D Tilbury failed to organise a promotion panel for the Claimant from 10 February 2021 onwards (a previous manager, Mr Ingleby having agreed to do so) because of his cardiac condition and/or Type II diabetes ('Detriment 1'); and

    ii. Mr D Tilbury recruited Alex Kim (announced on 5 January 2022) as the Head of Analysts and Adviser Relationships in North America without the Claimant's involvement because of the Claimant's cardiac condition and/or Type II diabetes ('Detriment 2').

17. The direct discrimination claim, in summary, alleged the two above things (plus dismissal ('Detriment 4') as less favourable treatment. The two detriments above were also argued as harassment related to disability. The claimant also brought a victimisation claim saying he was dismissed because he raised a grievance alleging discrimination.

18. Detriment 3 was withdrawn during the hearing.

Relevant Law

(i) *Time Limits – Equality Act 2010 claims*

19. These are governed by s.123 Equality Act 2010 ('EQA'):

> *(1)* *Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—*
>
> *(a)* *the period of 3 months starting with the date of the act to which the complaint relates, or*
>
> *(b)* *such other period as the employment tribunal thinks just and equitable […]*
>
> *(3)* *For the purposes of this section—*
>
> *(a)* *conduct extending over a period is to be treated as done at the end of the period;*
>
> *(b)* *failure to do something is to be treated as occurring when the person in question decided on it […]*

20. Applying *Jones v Secretary of State for Health and Social Care* [2024] EAT 2, we have a wide discretion to extend time on just and equitable grounds. Relevant factors we should normally take into account are: the length of (and reasons for) the delay, and whether the delay has prejudiced the respondent (for example, preventing or inhibiting it from investigating the claim while matters were fresh).

21. We must distinguish between acts which are properly analysed as conduct extending over a period and discrete acts with continuing consequences. Also, the statute requires us to distinguish between acts extending over a period and a succession of unconnected or isolated specific acts: *Hendricks v Metropolitan Police Commissioner* [2003] IRLR 96.

(ii) *Burden of proof – Equality Act 2010 claims*

22. Section 136 Equality Act 2010 ('EQA') provides: *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that*

the contravention occurred. (3) but subsection (2) does not apply if A shows that A did not contravene the provision.

23. It was held in *Field v Steve Pie* [2022] EAT 68 at [37]: *'In some cases there may be no evidence to suggest the possibility of discrimination, in which case the burden of proof may have nothing to add. However, if there is evidence that discrimination may have occurred it cannot be ignored. The burden of proof can be an important tool in determining such claims. These propositions are clear from the following well established authorities.'* Further at [41] that '*if there is evidence that could realistically suggest that there was discrimination it is not appropriate to just add that evidence into the balance and then conduct an overall assessment, on the balance of probabilities, and make a positive finding that there was a non-discriminatory reason for the treatment*.'

24. A protected characteristic need only have a material influence in detrimental treatment for discrimination to be established: *Nagarajan v London Regional Transport* [2000] 1 AC 501.

25. The burden is first on the claimant to show primary facts from which the tribunal could decide in the absence of any other explanation that their protected characteristic was a more than trivial reason for the way in which they were treated. If so, it is then for the respondent to prove that the treatment was in no sense whatsoever because of the protected characteristic.

(iii) <u>*Direct discrimination*</u>

26. Under section 13(1) EQA 2010: '*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*.' We must ask why the alleged discriminator acted as they did: *Chief Constable of the West Yorkshire Police v Khan* [2001] ICR 1065. The discriminatory reason does not need to be the only or the main reason for treatment for it to be unlawful: *London Borough of Islington v Ladele* [2009] IRLR 154 (EAT).

27. The statutory comparator must be someone in materially the same circumstances as the claimant but does not have the same protected characteristic.

28. Under section 39(2)(c) EQA 2010 an employer must not discriminate against a person by dismissing them.

(iv) Harassment

29. Under section 26 EQA, someone harasses another if they engage in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect or violating their dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. The purpose or effect of the conduct must be considered separately. In deciding whether conduct has the effect, we must take into account the claimant's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect. In terms of effect, we must ask first whether the claimant genuinely perceived the conduct as having that effect, and whether in all the circumstances, was that perception reasonable: *Pemberton v Inwood* [2018] EWCA Civ 564. The objective question about reasonableness is a question of factual assessment for the tribunal: *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336.

30. Tribunals must not ignore the seriousness of the statute's use of the words violating dignity, and creating an intimidating, hostile, degrading, humiliating or offensive environment: *Betsi Cadwaladr University Health Board v Hughes & Ors UKEAT/0179/13/JOJ.*

31. When deciding whether the conduct related to a protected characteristic we bear in mind that we must evaluate the evidence in the round and recognise that witnesses will not readily volunteer that conduct was related to a protected characteristic: *Hartley v Foreign and Commonwealth office Services* [2016] ICR EAT. 'Related' is a reasonably broad word, on its face, and is a looser statutory requirement than direct causation. The context of any given conduct is important: *Warby v Wunda Group plc* EAT 0434/11.

(v) *Victimisation*

32. Section 27 EQA says that *'(1) A person (A) victimises another person (B) if A subjects B to a detriment because — (a) B does a protected act […]'*.

33. It was accepted in this case that the claimant had made a protected act.

34. Detriment has a broad definition: *Jesudason v Alder Hay Children's NHS Foundation Trust* [2020] IRLR 374

(vi) *Unfair dismissal - redundancy*

35. Section 94 Employment Rights Act 1996 ('ERA') confers on employees the right not to be unfairly dismissed. The respondent admits that it dismissed the claimant within section 95(1)(a) ERA 1996. Section 98 ERA 1996 deals with the fairness of dismissals. The employer must show that it had a potentially fair reason for the dismissal within section 98(2) ERA 1996. If so, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

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

37. In ascertaining the reason for a dismissal the Tribunal will often need look no further than the reasons given by the appointed decision maker. However, if that is an invented reason it is the Tribunal's duty to penetrate through the invention rather than allow it to affect the Tribunal's own determination: *Royal Mail Group Ltd v Jhuti* [2019] UKSC 55. There was disagreement between the parties as to the extent that this applied to discrimination claims. We were referred to *First Greater Western Ltd v*

Moussa [2024] EAT 82 on this issue. However, in light of our findings of fact below it was not necessary to resolve this point of law.

38. Redundancy is defined in s.139 ERA 1996:

> *'For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—*
>
> *(a) the fact that his employer has ceased or intends to cease –*
>
> *(i) to carry on the business for the purposes of which the employee was employed by him, or*
>
> *(ii) to carry on that business in the place where the employee was so employed, or*
>
> *(b) the fact that the requirements of that business—*
>
> *(i) for employees to carry out work of a particular kind, or*
>
> *(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer*
>
> *have ceased or diminished or are expected to cease or diminish.'*

39. The tribunal must decide: (i) was the employee dismissed; (ii) if so, had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish? (iii) if so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution: *Safeway Stores plc v Burrell* 1997 ICR 523 EAT.

40. The tribunal must be slow to consider the reasonableness of a decision by an employer to do things that create a redundancy situation: *Moon and ors v Homeworthy Furniture (Norther) Ltd 1977 ICR 117 EAT*. Providing the redundancy situation is genuine (and not a sham) we are not entitled to challenge the fairness of the underlying business rationale for redundancies. However, we can question whether the decision to dismiss was genuine: *James W Cook & Co (Wivenhoe) Ltd v Tipper* [1990] ICR 716.

41. In determining the question of reasonableness it is not for the tribunal to impose its own standards and decide whether the employer should have

behaved differently. It must ask whether the dismissal lay within the range of conduct which a reasonable employer could have adopted. A reasonable employer might be expected to consider whether selection criteria were objectively chosen and fairly applied, whether employees were warned and consulted about the redundancy, whether union views are sought (if applicable) and whether there was alternative work available: *Williams and others v Compare maxam Ltd* 1982 ICR 156 EAT.

42. Whether or not the process was fair must take into account all of the process followed, including an appeal: *Mugford v Midland Bank* [1997] IRLR 208; *Taylor v OCS Group Ltd* [2006] IRLR 613

43. A selection pool of one can be reasonable: *Wrexham Golf Co Ltd v Ingham* EAT 0190/12.

Findings of fact

44. We make the findings below on the basis of the witness and documentary evidence. We only explain the basis for our findings where there was a dispute between the parties. There was no dispute about the authenticity of the documents in the bundle.

Background and chronology

45. The claimant was employed by the respondent from 12 July 2016 until his dismissal for reasons of redundancy on 2 February 2023. His latest role was as Global Financial Services and Insurance Head Analyst and Advisor since 2020. The respondent provides services relating to cybersecurity, cloud and high-performance computing across a range of industries in 71 countries.

46. The claims were presented and Acas conciliation dates as set out above.

47. From around 2020 the claimant's line manager was Mark Ingleby. The claimant's role was graded ('GCM') at grade 8, which is a senior role. The next role up would be a grade 9. The respondent had a practice where to

move from grade 8 to 9 the line manager would put the claimant forward for a promotion panel who would decide whether or not a promotion should happen. The usual practice would be for this to not be more frequent than every six months in order for an unsuccessful applicant to take into account feedback and demonstrate change. The process was started by the applicant's line manager.

48. The claimant clearly had an expectation that he be promoted although it was unclear to the tribunal why this was other than he had had the encouragement of a previous manager. The claimant said in evidence that high performance was not a requirement and that one way to be promoted was to have a team. His plan, in there being a grade 8 hire in North America (this later was Alex Kim), was that he would then need to be promoted to grade 9.

49. The claimant was unsuccessful at a promotion panel in October 2020. It was suggested that another promotion panel would be arranged and this was communicated to the claimant on 10 February 2021. Mark Ingleby left in February/March 2021 and Dave Tilbury became the claimant's line manager. The claimant had previously worked with Mr Tilbury as equals but not with him as a line manager.

50. The claimant had a cardiac episode and was diagnosed with ischemic heart disease in August 2021. The claimant took a short time off work (5 days) for treatment. He had an angiography with stent insertion surgery on 18 August 2021 and the claimant returned to work at the end of August 2021.

51. Throughout the relevant time the respondent was undergoing very significant restructures across a large number of areas.

52. The claimant's role was highly individual and was a standalone role. The claimant himself accepted that his role was unique. From 2021 his responsibilities were, on his own evidence, intended to lead a global team

of direct reports to manage relationships with the analyst and advisor community.

53. It was originally envisaged that the claimant would have a team of nine people. This was reduced as a plan to four as the respondent was engaging in cost cutting exercises. Those four individuals were never recruited. A business plan created by the claimant in 2020 for the purposes of the 2021 budget confirmed that the plan was to reduce to a four person structure which would give priority to the North American and UK market. The plan was for the claimant to head up a team of four individuals, with three at grade 5 and one at grade 8 or 9. The grade 8/9 is referred to as P2. The plan was for that role to be in Dallas and own the overall North American advisors. The slide stated *'If needed I can operate from Dallas initially to set it up and then hire a replacement in H2 2021'.*

54. On 9 August 2021 the claimant emailed others at the respondent stating '*At the start of the spring we planned for a 9 people team with close to a million in budgetary budget. After all the cost cuttings etc, at the end of spring program, I am currently a "one man army" on a 45 k discretionary budget … Hopefully next year will be better'.*

55. It was not in dispute that the focus of the relevant work in terms of growth had shifted to North America. This was accepted by the claimant in cross-examination.

56. On the claimant's own evidence in early September 2021 Mr Tilbury told the claimant that he should focus his attention on North America. The claimant repeated his request for a new hire there. By 13 October 2022 Mr Tilbury had authorised the hire. The claimant was not involved in the recruitment process. The claimant was aware of the recruitment because it had been at his repeated request. Also, he was copied into an email dated 13 October 2022 from Mr Tilbury to others about the recruitment exercise and who to target for it. However, the claimant did not challenge the recruitment of Ms Kim or his lack of involvement. He also did not suggest that he should be moved to that role around that time.

57. The respondent operated a policy where it would not normally have employees reporting to someone of the same grade.

58. In October 2021 the claimant received a 'meeting expectations' appraisal from Mr Tilbury. This was after Mr Tilbury was aware of the claimant's condition. Also the claimant did not perceive Mr Tilbury as being unimpressed with him (we make this finding because this was stated by the claimant in cross-examination).

59. Ms Alex Kim was recruited by the respondent on a date unknown but likely to be November or December 2021. We make this finding because her name first features in an organisational slide dated November 2021 as reporting to Chris Darlington, Head of Business Development, with the title '*Advisors'*. She was announced on 5 January 2022 as '*Head of Analyst & Advisors – FS&I Sales in North America*'. This reflected a shift in business model by the respondent towards regional business units (RBUs) which were local in scope compared to the claimant's global role. The claimant accepted in evidence, in effect, that the principal difference between a global role and a regional role was the level of counterparts in other organisations such as when he was dealing with investment banks, his counterpart would be at a global level as opposed to a regional level.

60. On 5 January 2022 the Ms Booton (of HR) emailed Mr Tilbury stating that she understood that he was looking at restricting and putting the claimant at risk. The claimant was invited to an initial redundancy consultation meeting by Mr Tilbury on 13 January 2022. This took place on 17 January 2022. The confirmation letter stated that the claimant was potentially at risk of redundancy due to the future direction of the respondent and the requirement was that the Analyst and Advisors role was to be carried out on a regional basis rather than globally. The claimant was referred to the respondent's internal vacancies and support programme for alternative roles. The claimant was given a right to appeal against the decision to select his position as being at risk of redundancy and initially a 30 days consultation period was put in place.

61. The 17 January 2023 consultation meeting notes included the rationale for the redundancy risk as being: *'The business rationale for the role being put at risk of redundancy is due to the future direction of Atos, and the need for the Analyst and Advisors role to be carried out on a regional basis rather than globally, focussing on RBU's such as North America'.* They also include that the claimant accepted during that meeting that that the role was supposed to have a wider scope and over time it had shrunk, and he understood why it had moved to a regional scope than a global one.

62. The claimant was off sick with stress from 19 January 2022. The claimant appealed his selection decision on 26 January 2022. The claimant was referred to occupational health on 26 January 2022. The claimant was informed on 31 January 2022 that the redundancy process would be suspended for two weeks (this is admitted by the claimant in a version of his claim form and is corroborated by an email drafted on 2 February 2022 between the claimant and Melanie Smithyman of HR who confirmed the content of the 31 January 2022 call). On 7 February 2022 the claimant was emailed by Mrs Smithyman stating that the redundancy process would be stopped until he was feeling better and had recovered.

63. In April 2022 Mr Tilbury left the respondent. He did not give evidence to the tribunal. Mr Tilbury's email inbox was deleted after either 21 days in accordance with the respondent's usual policy for staff leaves. Mrs Smithyman was the closest individual to Mr Tilbury's decision making having been the HR support during the relevant period. Mrs Smithyman was not aware of anything that would suggest that the claimant's disabilities had played a role in Mr Tilbury's decision making. We make this finding because of her evidence on this point which we accepted. There was also no other reason to doubt her evidence on this.

64. The business rationale for the claimant's redundancy was not put in writing as a 'business case'. However, we accept the evidence of Mrs Smithyman that the claimant's role was relatively new to the organisation and it was intended to grow and develop at a global level and scale. This is consistent with the claimant's own evidence and his business plan slides. It was also

not disputed by the claimant that his role had not grown as it was intended to. Mr Tilbury's assessment as related to Mrs Smithyman, which we accept because it is consistent with the wider evidence about the claimant's role, was that the claimant's role had become, in effect, a more regional role in the absence of the global part developing. The parties also agreed that the key market was in North America. Mr Tilbury's view was that some elements of the claimant's role should be carried out in the USA given the market demands. The respondent's position, through Mr Tilbury, was also that those elements of the role should be undertaken by someone who was local to the USA because of the need for specialist knowledge. These job demands were not really disputed by the claimant, although he felt he could have done the role on the basis of his existing experience and background. It was also the case that at the time of Ms Kim's hire, significant travel restrictions were in place as a result of Covid-19.

65. The business rationale for the redundancy was expressed by Mrs Smithyman in an email dated 24 January 2023 as part of the various investigations carried out by the respondent:

'As you know the role held was within the Global FS&I business and my understanding was that DT would have discussed the planned reorganisation with Adrian Gregory (AG) and Dave Seybold (is this correct) as well as the other FS&I RBU heads. From the conversations I had with DT this was not a decision taken in isolation and it was one that had been reached over number of months, DT came into role Feb/ March 2021, and it became apparent as the Industries grew and evolved that this role didn't have as wide a breath of work as had been expected. He looked at other options e.g. could it be expanded further or was there anything else that could be done in order to grow the role. What was apparent was the business in North America was where the growth was and the this resulted in decision to bring that work back into the R and recruit someone who would be aligned to the RBU as that was where the growth was at that time and where the role would continue to grow so it needed someone who had local market knowledge. It became evident the Global scope of the role had been diminishing and as such was at risk of redundancy.'

66. The effective diminution of the claimant's role was also supported by email evidence. On 9 November 2021 the claimant emailed a senior individual (Mr Wilkinson) stating '*I have been working with my external coach and her assessment is that I am in need of a new path because I might have reached a dead end in my current career progression'.*

67. The claimant was signed off work as sick for reasons of work-related stress from 19 May 2022, and further signed off sick for three months on 26 May 2022. An occupational health telephone assessment on 31 May 2022 confirmed that he was not fit to work. A further occupational health assessment on 2 September 2022 stated that he was not fit to work.

68. The claimant raised a grievance including allegations of disability discrimination on 13 September 2022.

69. A further fit note signed the claimant off work for reasons of work-related stress and anxiety on from 21 September 2022.

70. The claimant returned to work on 1 November 2022. An occupational health consultation on 4 November 2022 concluded that the claimant was fit to work with adjustments such as those relating to handling luggage. It says that the claimant had an improvement in mental health which had reduced from severe anxiety and severe depression to mild depression and moderate anxiety and he continues to have counselling which have been beneficial to his recovery.

71. The claimant was informed by Ms Joanne Deykes (Head of FS&I Northern Europe) that she would be managing his redundancy process on 11 November 2022 and he was invited to a consultation meeting on 16 November 2022. The claimant was informed of a 30 day consultation process at that meeting. The claimant alleged during meeting that his work had been taken over by Alex Kim in the USA and raised questions about others who had been given roles in the organisation.

72. The claimant repeated his appeal against redundancy selection on 23 November 2022. His appeal was handled by Anne-Marie Couper (NS&I Client Delivery Executive). She investigated various points made by the claimant. She determined that the others hired and given roles in the organisation (as raised by claimant during his consultation meeting) had nothing do to with the claimant's area of business. We make this finding because we accept her evidence on this point which was not meaningfully undermined in any way.

73. Further consultation meetings took place on 24 November 2022, 5 December 2022, 8 December 2022, and on 13 December 2022 the consultation was extended pending the outcome of the claimant's selection appeal. This was further extended on 3 January 2023 until 16 January 2023.

74. The claimant's selection appeal hearing took place on 9 January 2023 and his grievance hearing took place on the same day.

75. A further consultation meeting took place on 12 January 2023 and the consultation was further extended pending the outcome of the appeal to 23 January 2023. On 19 January 2023 it was extended until 30 January 2023. A further consultation meeting took place on 24 January 2023 and on 26 January 2023 the period further extended pending the appeal to 2 January 2023.

76. During the various consultation meetings the claimant was supported to find alternative work within the respondent. This included some positions being considered, the claimant was signposted to an internal support programme ('Hands Up') and the respondent's 'Internal First' scheme. Some specific roles were mentioned during the meeting as evidenced by the meeting notes. The respondent also signed the claimant up to the 'Internal First' scheme itself.

77. On 30 January 2023 the claimant's redundancy selection appeal was dismissed and his employment was terminated by reason of redundancy on

2 February 2023. The claimant's grievance was dismissed on 15 February 2023.

78. Neither the redundancy selection appeal nor grievance investigations uncovered evidence that the treatment of the claimant was because of any of his health conditions.

79. The respondent treated the redundancy selection appeal and grievance as separate and distinct processes. We make this finding because we accept the evidence of the respondent's witnesses on this point. Also, it is supported by email documents such as from Martha McDonald to the claimant dated 21 December 2022 stating that the processes would be separate and setting out the different scope of the exercises, and that no information would be shared between then to avoid influencing the decisions.

Specific disputed facts relevant to the issues

80. We had concerns about the claimant's credibility and reliability. This is because in evidence the claimant had a tendency to state things as clear and unequivocal facts which were not entirely accurate. For example, in the claimant's amended claim form at paragraph 6 he stated that '*In 2020…I accepted the role of Global Head of Analyst and Advisor. My main responsibilities were leading a global team of direct reports…… I was responsible for 4 direct reports*'. In his witness statement he stated '*My role was reduced by removing the four-person team (direct reports) whilst keeping most of the responsibilities the same…*' However, in accepted in cross-examination that he in fact never had a team to be taken away. The four-person team was simply expected to materialise, and was not actually in place at any stage. The claimant's witness statement is therefore misleading.

81. Against that background, and for additional reasons set out below, we did not accept the claimant's oral evidence on certain key points and do not find these proven allegations against Mr Tilbury:

(a) Making fun of the lifestyle changes that the Claimant had to make because of his diabetes;

(b) Commenting on the Claimant's weight gain;

(c) Commenting on the Claimant's hair loss, including on one occasion telling the Claimant that he would look better without hair;

(d) Commenting that the Claimant's restrictive diet made him unsuitable for client/external stakeholder roles

(e) When the Claimant tried to ask questions in senior management meetings, Mr Tilbury would say that the question was either irrelevant or that it could be dealt with later;

(f) Preventing the Claimant from sharing his views with colleagues in senior management meetings by either not inviting him to comment or by preventing him from speaking if he did attempt to speak;

(g) Being uncooperative and unresponsive to the Claimant's requests for Mr Tilbury to authorise the release of the funding to implement the business plan which had been signed off by Mark Ingleby.

82. These allegations were not supported by independent evidence. Also, there were numerous instances of the claimant making allegations amounting to bullying and harassment (above) in his witness evidence which were not included in his grievance as made to the respondent, such as the allegation that Mr Tilbury made fun of him.

83. It was also relevant that these allegations were not clearly identified in the claim or the list of issues by the claimant. We noted the potential unfairness to the respondent in responding to these allegations given the passage of time and fact that these allegations were not raised when they could have been responded to by Mr Tilbury.

84. We also do not find that the respondent changed the claimant's job description and taking away the provision in the business plan for four direct reports to be appointed while leaving the targets set on the basis of the Claimant having four reports intact, effectively expecting him to undertake the work of five people. This is because the evidence clearly showed that the team of four simply did not materialise. It was not the case that the respondent changed his job description, rather the evidence simply showed that when those four reports did not materialise, they were not included in his job description as direct reports to the claimant because he did not, in fact, have any direct reports.

85. The claimant also had a tendency to give oral evidence of potentially important conversations for the first time in cross-examination which were unsupported by documentary evidence and no cogent explanation was given as to why it did not feature in his witness statement. For example, an alleged discussion with Mr Tilbury about being put forward for a promotion panel in March 2021 and later alleged multiple verbal discussions later on in November that year. We found this surprising given that the circumstances of the promotion panel were central to one the claims made.

86. We do not find that the claimant offered to permanently relocate to the USA. The claimant tried to suggest in evidence that in 2020 when he was preparing an annual business plan he offered to relocate to North America as part of the reduced team. However, the documentary evidence (business slides) he relied on in support of this shows a slightly different picture, namely that his suggestion was either to hire locally, or for him to relocate purely to set up the role, and the hire a replacement locally. The slide stated *'If needed I can operate from Dallas initially to set it up and then hire a replacement in H2 2021'.* The claimant said in cross-examination that he offered to move there in an oral conversation with Mr Tilbury but accepted that there was no documentary evidence of this offer beyond the slides (above). It was unclear on the evidence when this alleged call took place.

87. We also noted that during the six redundancy consultation meetings the claimant did not expressly offer to relocate to anywhere outside of the UK,

in particular the USA. At most, he asked about where there were any other roles, globally. That is not the same, however, as making an open offer to relocate to another country.

88. Given our wider concerns about the credibility and reliability of the claimant's evidence, and lack of cogent corroborating evidence, we did not find as a matter of fact that the claimant offered (verbally or otherwise) to relocate on a permanent basis either in 2020 or at the time around Ms Kim's role was proposed in 2021.

89. For the same reasons, we do not find that Mr Tilbury made a blanket refusal of the claimant's reasonable adjustment requests for travel. This is because this allegation is wholly reliant on the claimant's account of a verbal conversation and is unsupported by documentary evidence. Although it may have not been necessary for us to make this finding given that the claim for failure to make reasonable adjustments on this issue was withdrawn, for completeness we make this decision because it was potential evidence in support of the other discrimination claims.

90. We also do not find that the claimant clearly and expressly requested a further promotion panel from Mr Tilbury. This is because there was no cogent and reliable evidence of this.

91. We also do not find that Ms Deykes, who dismissed the claimant, knew that he had done a protected act. We do find that she was copied into an email dated 23 November 2022 in which the claimant referenced having made a grievance, and further down the email chain there was an email that was not copied to Ms Deykes which included the fact that the claimant's grievance was about discrimination. However, we accept her evidence that she did not read the rest of the email chain that included the content of the claimant's grievance. There was no reason to doubt her evidence on this and she accepted that she did not want to know the content of the grievance to maintain the separation between the redundancy selection appeal, the redundancy consultation and the grievance. Also, Ms Deykes was not a direct recipient of the original email and it is realistic that she did not read

the lengthy section below. Also, the email dated 23 November 2022 was about the appeal against redundancy selection, not the redundancy consultation itself. Ms Deykes was only dealing with consultation and dismissal and we are satisfied that the respondent kept its processes separate. This is because this is supported by the witness evidence and documentary evidence (including email evidence) from the respondent at the time about the need to keep the processes separate.

Conclusions

92. For the avoidance of doubt, we do not consider that the claimant established the primary facts necessary from which a tribunal could reasonably infer that a contravention of the Equality Act 2010 occurred which would then shift the burden of proof to the respondent in accordance with s.136 Equality Act 2010. There was no such arguable case from our findings of fact.

1 Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, the Respondent says that any complaint about something that happened before 14 June 2022 may not have been brought in time.

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

93. The Respondent does not dispute that the claim of unfair dismissal has been brought in time.

94. The relevant allegations which were potentially out of time were detriments 1 and 2 for the direct disability discrimination and harassment related to disability claims. Detriment 1 involved an alleged failure by Mr Tilbury to organise a promotion panel for the claimant from 10 February 2021 until he left in April 2022. Detriment 2 was about the recruitment of Ms Kim without the claimant's involvement which was on or before 5 January 2022. Detriment 3 was withdrawn. Detriment 4 was the dismissal which the parties agreed was in time.

95. To the extent that that the allegations of detriments 1 and 2 were said to be reflective of Mr Tilbury's attitude towards the claimant they should be considered together. However, we found that on a proper analysis of the allegations, detriments 1 and 2 (together) were discrete acts that were separate from detriment 4 (the dismissal) and the detriments did not, overall, form a continuing course of conduct.

96. There did not appear to be any clear reason as to why there was a delay in bringing those claims. The evidence did not show that the claimant was unable to bring a claim for reason of ill health. We accept that the delay was relatively modest. However, the respondent has suffered very real prejudice arising from the claimant's delay in bringing claims about detriments 1 and 2, specifically the most important employee (Mr Tilbury) had left the organisation with consequent deletion of his emails. In the circumstances we decided that it was not just and equitable to extend time on the direct disability discrimination or harassment related to disability in relation to detriments 1 and 2. Those parts of the direct disability claims, and the harassment claims, are therefore dismissed.

97. We express our conclusions on those aspects of those claims below in the alternative in any event.

2 <u>Disability</u>

2.1 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Claimant relies upon:

2.1.1 subacute severe coronary disease from July 2021

2.1.2 Stress/anxiety from August 2021

2.1.3 Depression as part of the alleged mental impairment of anxiety and stress. The Claimant says depression started in February 2021

2.1.4 Type II Diabetes (the Claimant says this started in January 2016)

98. This is conceded by the respondent. We find that the claimant was disabled for the purposes of s.6 EQA 2010.

3 <u>Direct disability discrimination (Equality Act 2010 section 13)</u>

3.1 Did the Respondent do the following things:

3.1.1 Mr D Tilbury failed to organise a promotion panel for the Claimant from 10 February 2021 onwards (a previous manager, Mr Ingleby having agreed to do so) because of his cardiac condition and/or Type II diabetes.

99. We find that Mr Tilbury did not organise a promotion panel for the claimant. This was not in dispute. The end date for this allegation must be March/April 2022 when Mr Tilbury left the organisation. In accordance with the indication we gave to the parties, we did not read into the allegation of a 'failure' that it was necessary for the claimant to establish that Mr Tilbury was under a duty to promote the claimant during that period.

100. We do not find that there is any evidence from which we could infer that this non-action by Mr Tilbury was because of the claimant's conditions. This is because there simply no reason to believe that this was the case. The only evidence the claimant could point to about a discriminatory reason was the chronology, ie. that he had previously worked with Mr Tilbury and not had any issues, however, after Mr Tilbury learnt of his conditions the claimant says that the detriments arose. However, the claimant's chronology argument lacks merit. This is because there is no actual evidence of a change of position by Mr Tilbury during the course of his management of the claimant, particularly after the cardiac issues arose and Mr Tilbury became aware of them. Mr Tilbury did not organise a promotion panel from the outset. Also, in respect of the diabetes condition, there was no reason to believe that this would affect Mr Tilbury, particularly given that we have

not found that the claimant's diabetes affected Mr Tilbury's treatment of the claimant in any other way.

101. The claimant also ignores the fact that Mr Tilbury gave him a good appraisal after he became aware of the cardiac issue. The evidence only suggested that Mr Tilbury knew about the heart condition after August 2021 when the claimant took time off for the procedure. There was also no evidence to suggest that during Mr Tilbury's time (14 months) the conditions were having any real impact on the claimants work at a relevant time other than taking one week off.

102. Also, there was no cogent and reliable evidence of the claimant requesting a promotional panel with any clarity during the relevant period. We do not find that the claimant's email to Kevin Wilkinson (HR Director) on 9 November 2021 which referred to career progression was enough to amount to this.

103. We are able to find that issue was not motivated as alleged without express consideration of the respondent's justification for the lack of promotion panels. However, the claimant only considered that this detriment was because of his disabilities because he could think of no other reason why he would not have a promotion panel. In reality, the evidence suggested that the claimant's role had not grown or progressed as everyone had hoped. The claimant had only met, rather than exceeded, expectations on his appraisals and was not in fact managing a team. There was no clear justification as to why he should, in fact, have been put forward for a promotion panel during that period for other reasons. Also, for the first few months, Mr Tilbury was new in post and we accepted the evidence of the respondent's witnesses that it would be normal practice for a new manager to wait until he knew his team better before putting them forward for a promotion panel. All of these demonstrate good reasons other than the claimant's conditions.

3.1.2 Mr D Tilbury recruited Alex Kim (announced on 5 January 2022) as the Head of Analysts and Adviser Relationships in North America without the Claimant's involvement because of the Claimant's cardiac condition and/or Type II diabetes.

104. We find that Mr Tilbury did recruit Ms Kim without the claimant' involvement. This is not in dispute. However, the claimant was well-aware of someone being recruited to that role because he was copied into the 13 October 2021 email about it. The claimant did not raise any concerns about this, or his non-involvement to anyone, around that time.

105. We do not find, however, that the recruitment was without the claimant's involvement because of the claimant's cardiac condition or diabetes. This is because there is no evidence to suggest that this is the case.

106. We are able to find that the causal link is absent without express reference to the respondent's explanation. However, once this is taken into account, it is relevant that the claimant's role was shrinking (which is admitted by the claimant), the fact that as the proposed role was the same grade as the claimant's it would be unlikely that they would be line managed by him, and the respondent was going through a very widespread restructure around that period. In those circumstances there are very good reasons why the claimant did not need to be involved in that recruitment exercise (also given the absence of an express request by the claimant to be involved).

~~**3.1.3 On 11 November 2022 the Claimant was asked to join a meeting with Joanne Dykes without warning and without an agenda having been provided in advance at which his potential redundancy was discussed. The Claimant says that Joanne Dykes did not know about his cardiac condition or his mental impairment of stress/anxiety but was required to hold the meeting by the Respondent because of those conditions which he says each individually amount to disabilities. He does not know who orchestrated this but says that had he not had those disabilities then he would have been given warning and an agenda would have been provided. He does not say that the meeting would not have happened at all had he not had those disabilities.**~~

107. This allegation was withdrawn by the claimant during the hearing and dismissed by way of a separate judgment.

3.1.4 Dismiss the Claimant on 2 February 2023. The Claimant says this was because of his cardiac condition and that there was no genuine redundancy situation.

108. The respondent did dismiss the claimant on 2 February 2023. However, we do not find that this was because of his cardiac condition or that there was no genuine redundancy situation. We did not find that it was because of his cardiac condition because there were no primary facts from which this inference could be made, whether during the redundancy consultation (and his ultimately dismissal by Ms Deykes) or whether that was as a result of the process started by Mr Tilbury in selecting the claimant for redundancy. The claimant's counsel accepted during the cross-examination of Ms Deykes that by the time of dismissal, a genuine redundancy situation had arisen.

109. We also find that there was a genuine redundancy situation more broadly for the reasons outlined below under 'Unfair dismissal'.

3.2 Was that less favourable treatment?

This means that the Tribunal will decide whether the Claimant was treated worse than someone else (a "comparator") was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated (A "hypothetical comparator").

The Claimant has not named anyone in particular who they say was treated better than they were.

110. We also do not find that the detriments 1 or 2 were less favourable treatment. We do not find that the claimant was treated worse than someone else would have been treated in the circumstances. This is because there is no comparable evidence of actual comparators or evidence about how a hypothetical comparator would have been treated in the circumstances.

111. The circumstances as they were included that the claimant had a new manager in post, and had a shrinking role. There is no reason to believe that non-disabled people in those circumstances would have been treated any differently to the claimant. Equally, there is no reason to believe that where someone is being recruited into a new role that is not likely to be line managed by someone in the claimant's position, and they have not expressly asked to be involved in the recruitment or complained when they are not involved in the recruitment, they would be treated any differently as a non-disabled person.

112. It is also relevant that the claimant was aware that he was at a grade 8 role at the time of Ms Kim's recruitment and that there was no suggestion of another promotion panel in the short or medium term. In those circumstances he must have known that she was unlikely to be reporting to him (as he was the same grade) and so had no good reason to be involved in her recruitment.

113. We also do not find that the dismissal was less favourable treatment for the same reasons.

3.3 If so, was it because of disability etc?

114. Even if we are wrong in the above analysis, we do not find that any less favourable treatment was because of the claimant's disability. This is because the claimant has not established any primary facts from which we could infer that it was because of disability. We repeat our reasons above.

115. For the above reasons the claim of direct disability discrimination is dismissed.

4 Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

Claim 1

4.1 Did the Respondent know, or could it reasonably have been expected to know, that the Claimant had the relevant disabilities? From what date?

116. In light of our other conclusions it is not necessary for us to determine this issue.

4.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCP:

4.2.1 The standard redundancy process.

117. The respondent accepted that its standard redundancy process was a PCP and we make that finding. It plainly was the respondent's practice.

4.3 Did the PCP put the Claimant at a substantial disadvantage compared to someone without the Claimant's relevant disability?

The Claimant says that:

4.3.1 The redundancy process starting in January 2022 and then recommencing in November 2022 was stressful and therefore had a more serious impact on the Claimant because of his cardiac condition and his alleged disability of stress and anxiety. The starting of the process in January 2022 he says resulted in him needing to undergo a further cardiac procedure in February 2022 and needing to undertake talking therapy.

118. We do not find that the starting and restarting of the redundancy process put the claimant at a substantial disadvantage compared to someone without the claimant's disability. This is because the evidence clearly showed that when the claimant was being seriously affected by his conditions the redundancy process was stopped. It was only restarted when this was consistent with the advice of occupational health. Given that the respondent's practice in applying its procedures was to stop the consultation when it was having a clear effect on the claimant, as evidenced by medical evidence and in accordance with occupational health assessments, there was no real disadvantage to the claimant.

119. The fact that the claimant's conditions extended the redundancy consultation period was also to his advantage rather than a disadvantage to the extent that he was employed for a longer period of time.

120. We also do not find that the respondent's standard redundancy process caused the claimant's cardiac treatment in February 2022. This is because there is no clear medical evidence on causation.

121. We accept that the redundancy process was stressful for the claimant, particularly given his condition. However, we did not feel that there was cogent evidence that the PCP itself, namely the standard redundancy process, in fact put the claimant at a substantial disadvantage. This is because the respondent's application of the process clearly allowed it to be stopped and started to take into account the claimant's medical position.

4.3.2 He was not able to look for alternative roles within the Respondent as part of the redundancy process because of his rehabilitation from his cardiac condition and the need to complete his talking therapy.

122. We do not find that the PCP put the Claimant at this substantial disadvantage compared to someone without the Claimant's relevant disability. This is because the claimant accepted during his evidence that that this allegation only related to the period January and February 2022. The claimant accepted in evidence that he was looking for work during the later period. The written evidence clearly showed the claimant being able to explore other roles with the support of the respondent during the later period. Also, the consultation process was stopped during January and February 2022 so there was no expectation that the claimant would be looking for other roles then.

4.4 Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was likely to be placed at the disadvantage?

123. In light of our conclusions above, it is not necessary to determine this issue.

4.5 What steps could have been taken to avoid the disadvantage? The Claimant suggests:

4.5.1 That the redundancy consultation process:

4.5.1.1 should have been paused from 19 January 2022 (the Claimant is unable to say how long the pause should have lasted because he does not know when he might have been fit to return to work and recommence the consultation); and

4.5.1.2 should not have been restarted as it was in November 2022.

4.6 Was it reasonable for the Respondent to have to take those steps and when?

124. We also do not find that it was reasonable for the respondent to take the steps proposed, if we are wrong in the above findings on substantial disadvantage. We accept that it was reasonable for there to be a pause in the consultation because of the claimant's ill health. However, it was appropriate for there to be a short delay whilst the issue was considered by the respondent and for a referral to be made to occupational health on 26 January 2022. The claimant was first informed of the pause on 31 January 2022, only a short time after he was off sick. Overall, we consider that the steps the respondent took to pause the consultation were reasonable in terms of timeframe.

125. We do not consider that not restarting the process in November 2022 would have been reasonable. This is because the occupational health advice dated 4 November 2022 said that the claimant was fit to work with temporary adjustments such as not carrying luggage. It says that the claimant had an improvement in mental health which had reduced from severe anxiety and severe depression to mild depression and moderate anxiety, and he continues to have counselling which have been beneficial to his recovery. The proposed adjustments did not include anything relating to the redundancy consultation. The fact that the report notes a risk of recurrence of work-related stress if work-related stressors remain unresolved in not sufficient to establish that restarting the consultation was inappropriate.

126. Also, the claimant's proposed reasonable steps effectively amounted to pausing the consultation indefinitely. There this would not have been reasonable as it would be entirely counter to the reasonable steps a business should be able to take to restructure its workforce.

4.7 Did the Respondent fail to take those steps?

127. In light of our conclusions, the respondent did not fail to take any steps that would have been reasonable in the circumstances.

4.8 Did the Respondent know, or could it reasonably have been expected to know, that the Claimant had the applicable disability? From what date?

128. In light of our conclusions above and below, it is not necessary to determine this issue.

129. For the above reasons the claim of failure to make reasonable adjustments is dismissed.

~~**Claim 2**~~

~~**4.9 Did the Respondent have the following PCP:**~~

~~**4.9.1 The application of the Respondent's standard travel policy.**~~

~~**4.10 Did that PCP put the Claimant at a substantial disadvantage compared to someone without the Claimant's applicable disability, in that:**~~

~~**4.10.1 The Claimant could not travel under that policy because his type II diabetes meant that could not travel standard class and needed to stay in hotels that could meet his dietary requirements as a man with Type II diabetes.**~~

~~**4.11 Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was likely to be placed at the disadvantage?**~~

~~**4.12 What steps could have been taken to avoid the disadvantage? The Claimant suggests:**~~

~~**4.12.1 Standard travel policy should have been varied to allow him to travel in an upgrade flight class and stay in more expensive hotels (in large conurbations) where he could meet his dietary**~~

~~**requirements. The Claimant says that these adjustments were in place up until the appointment of Mr Tilbury as his manager but not afterwards.**~~

~~**4.13 Was it reasonable for the Respondent to have to take those steps from March 2021 onwards?**~~

~~**4.14 Did the Respondent fail to take those steps?**~~

130. This claim was withdrawn by the claimant during the hearing and is dealt with in a separate judgment.

5 Harassment related to disability (Equality Act 2010 section 26)

5.1 Did the Respondent do the following things:

5.1.1 Mr D Tilbury failed to organise a promotion panel for the Claimant from 10 February 2021 onwards (a previous manager, Mr Ingleby having agreed to do so)

5.1.2 Mr D Tilbury recruited Alex Kim (announced on 5 January 2022) as the Head of Analysts and Adviser Relationships in North America without the Claimant's involvement.

131. We repeat our findings above about these issues. It was not disputed that Mr Tilbury did not organise a promotional panel for the relevant period, and that the claimant was not involved in the recruitment of Ms Kim.

5.2 If so, was that unwanted conduct?

132. We accept that, on its face, it was unwanted conduct. This is plain from the nature of the conduct.

5.3 Did it relate to the Claimant's cardiac condition and/or Type II diabetes.

133. We do not find that it related in any way to the claimant's conditions. This is for the same reasons as outlined above under direct discrimination. There are no primary facts from which we could properly infer that any of the unwanted conduct related to the claimant's conditions. The claimant's comparison of his time with Mr Tilbury is not comparing like for like because the claimant's previous experience of him was not as a manager.

5.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

134. Even if we are wrong about the above, we did not find that the purpose of the conduct was to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment. This is because there is no clear evidence from which we could infer that the treatment was with purpose. There are no primary facts from which that inference could be made. It is also not inherent in the actions described. The evidence also suggested that the respondent had good business motives for each of the conduct alleged as set out above in terms of explaining the conduct.

5.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

135. We also do not find that the unwanted conduct had this effect. This is because there was a lack of clear and detailed evidence that this conduct specifically had on the claimant; it is simply described by the claimant as 'bullying and harassment'. The occupational health evidence dated 7 February 2022 – significantly after the conduct – details work-related stress however this was after the claimant had been selected as being at risk of redundancy. There was also some evidence that the claimant had some work stress in November 2021 by his email dated 9 November 2021 referring to stress, and recognising that he might have reached a dead end in his current career progression. However, this falls far short of the level required before has the effect of harassment as defined in the Equality Act 2010 given the strong words used in the legislation.

136. Also, even if it did have such an effect, given the nature of the actions, any serious effect on the claimant would not be reasonable. This is because non-promotion, and not being involved in particular recruitment exercises, in the particular circumstances of this case, would not reasonably have the

effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

6 Victimisation (Equality Act 2010 section 27)

6.1 Did the Claimant do a protected act as follows:

6.1.1 Raise a grievance on 13 September 2022 asserting that his rights as a disabled person had been breached under the Equality Act 2010?

137. We find that the protected at was made. This was not in dispute.

6.2 Did the Respondent do the following things:

6.2.1 Dismiss the Claimant on 2 February 2023

138. We find that the respondent did dismiss the claimant on 2 February 2023.

6.3 By doing so, did it subject the Claimant to detriment?

139. We find that it did. This is because a dismissal is by its nature a detriment.

6.4 If so, was it because the Claimant did a protected act?

6.5 Was it because the Respondent believed the Claimant had done a protected act?

140. We do not find that either of these are made out. There is no cogent evidence from which we could make either of these findings. Also, it was not established in evidence that Ms Deykes who dismissed the claimant in fact knew that he had done a protected act. Our reasons for that finding are explained above.

141. In circumstances where Ms Deykes was not aware that the claimant had made a grievance alleging discrimination there is no reason to believe that he was dismissed because he had done a protected act. We accept that there were others individuals at the respondent who were aware of the protected act. However, there is no reason to find that their knowledge had any impact on the claimant's dismissal or reason for dismissal.

142. We also accept the respondent's submission that this claim is implausible on the chronology. This is because the claimant was placed at risk of redundancy on 17 January 2022 but his protected act was not made until September 2022. In the context of our factual findings, there was no reason to believe that his eventual dismissal in February 2023 was influenced in any way by the making of the protected act.

143. For those reasons the claim of victimisation is dismissed.

8 Unfair dismissal

8.1 The Respondent does not dispute that it dismissed the Claimant.

8.2 What was the reason or principal reason for dismissal? The Respondent says the reason was redundancy.

8.3 As per this list of issues the Claimant asserts that his dismissal was a sham, was not by reason of redundancy.

This is part of the Claimant's direct disability discrimination claim. As he says he was dismissed because of his alleged disabilities (being a physical cardiac condition and a mental condition of stress/anxiety as well as Type II Diabetes).

This is also part of the Claimant's victimisation claim.

144. In light of our conclusions on the facts, and our findings above on the other claims, and consistent with them, we do not find that the dismissal was because of the claimant's disabilities. This is because there is an absence of evidence from which we could properly make that finding.

145. We also do not find that this was a sham redundancy situation. This is because of an absence of evidence that this was the case. The reality was that the claimant's role had significantly reduced over time and the claimant accepted this. The respondent was also undergoing significant other restructures at the time.

146. Also, we do not consider that this was a situation contrived by Mr Tilbury. The claimant's role was reducing for a long time and the claimant had failed to be promoted even before then. The claimant's email evidence from both

August and November 2021 suggested that he was well-aware that his role had not worked out as intended and had significantly diminished.

147. Also, it is relevant that the recruitment of Ms Kim was part of the claimant's business plan. Her recruitment was at the claimant's instigation and he was aware of her being recruited. The claimant did not object to her recruitment at the time despite his own knowledge about the issues his role was facing. In those circumstances it is very difficult to find that the claimant's redundancy was a sham creation of Mr Tilbury or a situation contrived by him.

148. In the circumstances, we conclude that the claimant's role had become redundant and he was dismissed for reasons of redundancy. Whilst we acknowledge the fact that the business case for his redundancy was not put into a specific document, we consider that this is insufficient to suggest that him being put at risk was a sham or because of reasons for his disability. This is because the claimant accepted the wider business and market conditions in which his role had diminished. Also, the factual position was summarised in writing in the 17 January 2022 consultation. This was consistent with the understand of Mrs Smithyman as expressed in her evidence and emailed business rationale which was written during the course of the respondent's investigations.

149. It is also relevant that the claimant's counsel conceded during the hearing that there was, as a matter of fact, a redundancy situation at the time of dismissal. This is consistent with the facts about the role and its diminished size as described by both the claimant and the respondent's witnesses. We have no doubt in concluding that the reason for the dismissal was the claimant's redundancy, as clearly expressed by Ms Deykes in her evidence.

8.4 If the reason was redundancy, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant. The Tribunal will usually decide, in particular, whether:

8.4.1 The Respondent adequately warned and consulted the Claimant;

8.4.2 The Respondent adopted a reasonable selection decision, including its approach to a selection pool;

8.4.3 The Respondent took reasonable steps to find the Claimant suitable alternative employment;

8.4.4 Dismissal was within the range of reasonable responses.

150. There was no evidence or real argument that the respondent's approach to a selection pool rendered the redundancy unfair. In any event, we do not consider that any other selection pool would have been required in the circumstances of the case or that the respondent's approach was unreasonable. This is because the claimant's role was unique and standalone, as he accepted. Also, it would not have been reasonable to include Alex Kim's role as it was fundamentally different to the claimant's role: she was local to the regional business unit where elements of the work were being carried out and had specialised knowledge. It would not have been reasonable for the respondent to include a distinctly different role with different skills in another jurisdiction when it put the claimant at risk of redundancy when it was the claimant's global role that had become redundant in terms of business need.

151. We consider that, taking everything into account, the claimant was adequately warned and consulted. We do not consider that the consultation process should have started sooner than it did, as suggested by the claimant. This is because the respondent was entitled to wait until the claimant's role was truly redundant before it found that he was at risk of redundancy. There was every possibility that the claimant's role, or the wider business market, could have improved before then. Also, Ms Kim's role was different to the claimant's: his was a global role, and she had a regional role based in a regional business unit. She later reported to a line manager more consistent with business development than the claimant's role.

152. Also, we do not consider that the later timing of the claimant's consultation rendered the procedure unfair on the basis that he could not apply for her

role. The claimant was well-aware of Ms Kim's recruitment and did not seek to be put into that role. It was a role created at his suggestion. Also, on the evidence, the claimant did not appear to be suitable for that role because he did not have the local knowledge that the respondent's witnesses said was required. Although the claimant was of the view that he was perfectly able to do the role, on the basis of his own experience, this was not something that the respondent agreed with, and that we do not consider the respondent's position to be unreasonable on the facts. Also, it was entirely reasonable not to propose moving the claimant to a new role in the USA during the time of restrictions on movement as a result of Covid-19.

153. It is also not for the tribunal to find that a redundancy was unfair simply because, with the benefit of hindsight, the restructure could have been done in a different manner with different timings.

154. Ultimately, we consider that the process adopted was fair. The claimant was warned of being at risk of redundancy, the rationale was explained to him, and his global role was no longer required. This rationale was consistently applied throughout the process including by Ms Deykes at the time of dismissal. The process was also stopped and restarted for a significant period of time whilst the claimant was off sick. It did not restart until this was consistent with occupational health advice. We also find that the claimant was supported to find alternative work, that the respondent undertook genuine attempts to find alternative roles within the organisation as evidenced by the meeting notes, and that no such alternative post could be identified. In those circumstances there is nothing unfair (procedurally, or substantially) about his dismissal.

155. Also, the claimant was able to appeal the decision for selection for redundancy. We accept that there were clear limitations to the extent to which the underlying rationale could be challenged by the claimant in the absence of a separately documented business case. However, we do not consider that this rendered the consultation unfair. We feel that the respondent did what was reasonable in the absence of a written business case, in particular by gaining information from Mrs Smithyman who was

closest to Mr Tilbury. Given that Mr Tilbury had left the organisation by the time the consultation process was restarted, there were limits to what the respondent could reasonably be expected to do. Also, we do not consider that any extensive investigation into the business case – such as by seeking more information from more senior managers – was necessary given that the business and market circumstances were not really disputed by the claimant. He accepted that his role had diminished, it had not grown to include the team as expected, and the work growth was in North America. In reality, the only possibility of exploring a discriminatory reason for selection could have been by interviewing Mr Tilbury. He had left the organisation. We are satisfied that the procedure, taken as a whole, was not rendered unfair by any issues that the claimant had with it.

156. For those reasons the claim for unfair dismissal is dismissed.

Employment Judge Barry Smith
8 July 2024

SENT TO THE PARTIES ON

12 July 2024
.....

.....
FOR THE TRIBUNAL OFFICE

Appendix A – List of Issues

The issues the Tribunal will decide in relation to are set out below. This list combines the issues in Claim one and two and the agreed amendments.

1 Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, the Respondent says that any complaint about something that happened before 14 June 2022 may not have been brought in time.

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

NOTE: The Respondent does not dispute that the claim of unfair dismissal has been brought in time.

2 Disability

2.1 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Claimant relies upon:

2.1.1 subacute severe coronary disease from July 2021

2.1.2 Stress/anxiety from August 2021

2.1.3 Depression as part of the alleged mental impairment of anxiety and stress. The Claimant says depression started in February 2021

2.1.4 Type II Diabetes (the Claimant says this started in January 2016)

NOTE: The Respondent concedes that the alleged impairments are all disabilities

3 Direct disability discrimination (Equality Act 2010 section 13)

3.1 Did the Respondent do the following things:

3.1.1 Mr D Tilbury failed to organise a promotion panel for the Claimant from 10 February 2021 onwards (a previous manager, Mr Ingleby having agreed to do so) because of his cardiac condition and/or Type II diabetes.

3.1.2 Mr D Tilbury recruited Alex Kim (announced on 5 January 2022) as the Head of Analysts and Adviser Relationships in North America without the Claimant's involvement because of the Claimant's cardiac condition and/or Type II diabetes.

3.1.3 On 11 November 2022 the Claimant was asked to join a meeting with Joanne Dykes without warning and without an agenda having been provided in advance at which his potential redundancy was discussed. The Claimant says that Joanne Dykes did not know about his cardiac condition or his mental impairment of stress/anxiety but was required to hold the meeting by the Respondent because of those conditions which he says each individually amount to disabilities. He does not know who orchestrated this but says that had he not had those disabilities then he would have been given warning and an agenda would have been provided. He does not say that the meeting would not have happened at all had he not had those disabilities.

3.1.4 Dismiss the Claimant on 2 February 2023. The Claimant says this was because of his cardiac condition and that there was no genuine redundancy situation.

3.2 Was that less favourable treatment?

This means that the Tribunal will decide whether the Claimant was treated worse than someone else (a "comparator") was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated (A "hypothetical comparator").

The Claimant has not named anyone in particular who they say was treated better than they were.

3.3 If so, was it because of disability etc?

4 Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

NOTE: There are two Reasonable Adjustment claims

Claim 1

4.1 Did the Respondent know, or could it reasonably have been expected to know, that the Claimant had the relevant disabilities? From what date?

4.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCP:

4.2.1 The standard redundancy process.

4.3 Did the PCP put the Claimant at a substantial disadvantage compared to someone without the Claimant's relevant disability?

NOTE: The Claimant says that:

4.3.1 The redundancy process starting in January 2022 and then recommencing in November 2022 was stressful and therefore had a more serious impact on the Claimant because of his cardiac condition and his alleged disability of stress and anxiety. The starting of the process in January 2022 he says resulted in him needing to undergo a further cardiac procedure in February 2022 and needing to undertake talking therapy.

4.3.2 He was not able to look for alternative roles within the Respondent as part of the redundancy process because of his rehabilitation from his cardiac condition and the need to complete his talking therapy.

4.4 Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was likely to be placed at the disadvantage?

4.5 What steps could have been taken to avoid the disadvantage? The Claimant suggests:

4.5.1 That the redundancy consultation process:

4.5.1.1 should have been paused from 19 January 2022 (the Claimant is unable to say how long the pause should have lasted because he does not know when he might have been fit to return to work and recommence the consultation); and

4.5.1.2 should not have been restarted as it was in November 2022.

4.6 Was it reasonable for the Respondent to have to take those steps and when?

4.7 Did the Respondent fail to take those steps?

4.8 Did the Respondent know, or could it reasonably have been expected to know, that the Claimant had the applicable disability? From what date?

Claim 2

4.9 Did the Respondent have the following PCP:

4.9.1 The application of the Respondent's standard travel policy.

4.10 Did that PCP put the Claimant at a substantial disadvantage compared to someone without the Claimant's applicable disability, in that:

4.10.1 The Claimant could not travel under that policy because his type II diabetes meant that could not travel standard class and needed to stay in hotels that could meet his dietary requirements as a man with Type II diabetes.

4.11 Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was likely to be placed at the disadvantage?

4.12 What steps could have been taken to avoid the disadvantage? The Claimant suggests:

4.12.1 Standard travel policy should have been varied to allow him to travel in an upgrade flight class and stay in more expensive hotels (in large conurbations) where he could meet his dietary requirements. The Claimant says that these adjustments were in place up until the appointment of Mr Tilbury as his manager but not afterwards.

4.13 Was it reasonable for the Respondent to have to take those steps from March 2021 onwards?

4.14 Did the Respondent fail to take those steps?

5 Harassment related to disability (Equality Act 2010 section 26)

5.1 Did the Respondent do the following things:

5.1.1 Mr D Tilbury failed to organise a promotion panel for the Claimant from 10 February 2021 onwards (a previous manager, Mr Ingleby having agreed to do so)

5.1.2 Mr D Tilbury recruited Alex Kim (announced on 5 January 2022) as the Head of Analysts and Adviser Relationships in North America without the Claimant's involvement.

5.2 If so, was that unwanted conduct?

5.3 Did it relate to the Claimant's cardiac condition and/or Type II diabetes.

5.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

5.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

6 Victimisation (Equality Act 2010 section 27)

6.1 Did the Claimant do a protected act as follows:

6.1.1 Raise a grievance on 13 September 2022 asserting that his rights as a disabled person had been breached under the Equality Act 2010?

6.2 Did the Respondent do the following things:

6.2.1 Dismiss the Claimant on 2 February 2023

6.3 By doing so, did it subject the Claimant to detriment?

6.4 If so, was it because the Claimant did a protected act?

6.5 Was it because the Respondent believed the Claimant had done a protected act?

7 Remedy for discrimination (including direct discrimination, harassment and victimisation and failure to make reasonable adjustments).

7.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

7.2 What financial losses has the discrimination caused the Claimant?

7.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

7.4 If not, for what period of loss should the Claimant be compensated?

7.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

7.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

7.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

7.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

7.9 Did the Respondent or the Claimant unreasonably fail to comply with it by [specify breach]?

7.10 If so is it just and equitable to increase or decrease any award payable to the Claimant?

7.11 By what proportion, up to 25%?

7.12 Should interest be awarded? How much?

8 Unfair dismissal

8.1 The Respondent does not dispute that it dismissed the Claimant.

8.2 What was the reason or principal reason for dismissal? The Respondent says the reason was redundancy.

8.3 As per this list of issues the Claimant asserts that his dismissal was a sham, was not by reason of redundancy.

NOTE: This is part of the Claimant's direct disability discrimination claim. As he says he was dismissed because of his alleged disabilities (being a physical cardiac condition and a mental condition of stress/anxiety as well as Type II Diabetes).

NOTE: This is also part of the Claimant's victimisation claim.

8.4 If the reason was redundancy, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant. The Tribunal will usually decide, in particular, whether:

8.4.1 The Respondent adequately warned and consulted the Claimant;

8.4.2 The Respondent adopted a reasonable selection decision, including its approach to a selection pool;

8.4.3 The Respondent took reasonable steps to find the Claimant suitable alternative employment;

8.4.4 Dismissal was within the range of reasonable responses.

9 Remedy for unfair dismissal

9.1 Does the Claimant wish to be reinstated to their previous employment?

9.2 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?

9.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

9.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

9.5 What should the terms of the re-engagement order be?

9.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

9.6.1 What financial losses has the dismissal caused the Claimant?

9.6.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

9.6.3 If not, for what period of loss should the Claimant be compensated?

9.6.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

9.6.5 If so, should the Claimant's compensation be reduced? By how much?

9.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

9.6.7 Did the Respondent or the Claimant unreasonably fail to comply with it?

9.6.8 If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

9.6.9 If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

9.6.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

9.6.11 Does the statutory cap of fifty-two weeks' pay or the applicable financial cap apply?

9.7 What basic award is payable to the Claimant, if any?

9.8 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?