EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr John Evans	**v**	AF Machinery Limited

Heard at: Bury St Edmunds

On: 20, 21, 22, 23, 24, 27 and 28 March 2023 (in person); and 3, 4 and 5 May 2023 (in Chambers)

Before: Employment Judge K J Palmer

Members: Mr S Holford and Mr B McSweeney

Appearances
For the Claimant: In person
For the Respondent: Mr D Northall, Counsel

RESERVED JUDGMENT

It is the unanimous Judgment of this Tribunal as follows:

1. The Claimant's claims in discrimination arising from disability under s.15 of the Equality Act 2010 fail and are dismissed.

2. The Claimant's claims for a failure to make reasonable adjustments under §.20 / 21 of the Equality Act 2010 fail and are dismissed.

3. The Claimant's claims in harassment under s.26 of the Equality Act 2010 fail and are dismissed.

4. The Claimant's claims in victimisation under s.27 of the Equality Act 2010 fail and are dismissed.

5. The Claimant's claim for constructive unfair dismissal fails and is dismissed.

6. The Claimant's claims for a detriment arising pursuant to s.44 of the Employment Rights Act 1996 fail and are dismissed.

7. The Claimant's claims for protected disclosure detriment (whistle blowing) under s.47B of the Employment Rights Act 1996 fail and are dismissed.

8. The Claimant's claims for a breach of the Working Time Regulations 1998, s.45A / s.101A of the Employment Rights Act 1996 fail and are dismissed.

9. The Claimant's claim for breach of contract or unlawful deduction of wages under s.23 of the Employment Rights Act 1996 fails and is dismissed.

10. For the avoidance of doubt, the Claimant's claim all fail and are dismissed in their entirety.

REASONS

1. This matter came before this Tribunal listed as an eight day Hearing, in person, at the Bury St Edmunds Employment Tribunal. Only seven days of listing time were available.

2. We managed to deal with all evidence and submissions in that time and Judgment was reserved to a discussion in Chambers over three days.

3. The Claimant represented himself and the Respondents were represented by Counsel.

Background and brief history of the matter

4. The Claimant presented two claims to this Tribunal; the first on 22 August 2020 and the Second on 15 June 2021.

5. Various Case Management Hearings took place before three different Employment Judges. Ultimately both claim numbers were consolidated in one action and pursuant to various Case Management Orders, the parties finally agreed a List of Issues which was before the Tribunal.

6. In his consolidated actions the Claimant pursues claims against the Respondent for:

    - discrimination arising from disability under s.15 of the Equality Act 2010 ("EqA");
    - a failure to make reasonable adjustments under §.20 and 21 EqA 2010;
    - harassment relying on the protected characteristics of disability and age under s.26 EqA 2010;
    - victimisation under s.27 EqA 2010;
    - constructive unfair dismissal under s.95 of the Employment Rights Act 1996 ("ERA");

- a detriment arising from health and safety concerns under s.44 ERA 1996;
- a protected disclosure detriment under s.47B ERA 1996;
- a breach of Working Time Regulations s.45A / s.101A ERA 1996; and
- an unlawful deduction of wages under s.23 ERA 1996.

7. That agreed List of Issues runs to some 9 pages and 40 paragraphs.

8. I do not propose to repeat that List of Issues here save for the fact that in this Judgment in the 'Conclusions' section each and every issue as set out and listed is dealt with.

9. The Tribunal had before it a Bundle running to some 832 pages and a supplementary Bundle from the Claimant running to 64 pages, together with some further additional documentation running to 5 pages and marked 'R2' consisting of various statements of fitness for work. The Tribunal heard evidence from the Claimant and in support of the Claimant from John Hegarty whose evidence was heard via video link.

10. The Tribunal also heard evidence from witnesses for the Respondent from:

- Beth Mleczek, HR Administrator;
- James Slaven, Sprayer Operator;
- Neil Sturgeon, Finance Manager;
- Paul Bryant, Tractor Driver;
- Paul Churchyard, Farm Manager;
- Robert Coles, Tractor Driver and Sprayer Operator;
- Steven Tortice, Land Operations Manager;
- Tom Forrest, Farm Manager; and
- Jennifer Tortice, Farm Secretary.

11. We also had a Witness Statement produced by Matthew Abery which was unsigned and attached as an exhibit to Jennifer Tortice's Witness Statement. Matthew Abery, due to significant ill health, was unable to attend and give evidence. There was also a further Witness Statement from Ross Strowger who also did not attend to give live evidence.

Disability

12. The majority of the Claimant's claims are based on a disability. The Respondent accepts that the Claimant was disabled within the meaning of the Equality Act 2010 by reason of his Myalgic Encephalomyelitis (ME) and Chronic Fatigue Syndrome (CFS) during the material period. The material period is 2019 to 17 March 2021.

13. The Respondent accepts it had knowledge of the disability from 5 January 2019, but disputes any knowledge prior to that date. The Respondent also

disputes knowledge of the effects, where applicable and in particular, for a failure to make reasonable adjustments, whether the Respondents employees had actual knowledge, or could reasonably be expected to know that the Claimant was likely to be placed at a substantial disadvantage by the alleged PCPs.

Preliminary Points

14. There were two short preliminary points. The first concerned the Witness Statements before us of Matthew Abery and to a lesser extent Ross Strowger. We reminded the Respondents that we would read these Witness Statements but would apply such weight to them only as is appropriate in circumstances where witnesses produce a Witness Statement but are not present at the Tribunal to be tested on their evidence.

15. Secondly, part of the factual matrix which was to be before us and one issue raised by the Claimant as part of his harassment claim related to an incident occurring whilst the Claimant was employed by the Respondent out of working hours but in premises owned by the Respondent company. That incident which occurred between the Claimant and another employee of the Respondent caused the Claimant to raise a very serious allegation of assault against that other employee which the Respondents investigated. The method of that investigation forms part of the Claimant's claim in harassment. Accordingly, it was necessary for us to have before us in the Claimant's Supplementary Bundle details of notes taken when the Claimant was interviewed as part of that investigation. Those notes reveal the nature of the serious assault alleged and the name of the alleged perpetrator. That alleged perpetrator is not a party to these proceedings, nor is that person giving evidence before this Tribunal.

16. After some discussion it was resolved that the Tribunal would not record in any public document the name of that alleged perpetrator who was an employee of the Respondent but who is now no longer. The Tribunal resolved to only have cognisance of the details of the alleged assault insofar as was necessary for it to reach a determination on the one area that that played a part in the Claimant's claim for harassment.

Findings of Fact

17. The Claimant was employed by the Respondent from 1 August 2011 until his resignation on 18 March 2021. He was employed as a spray operator on Abrey Farms. Abrey farms are a large farming operation specialising mainly in arable farming.

18. The material period with which this claim is concerned covers the period from January 2019 through to the Claimant's resignation.

19. We feel it is important to make some comments concerning the nature of the evidence before us. We heard extensive evidence from the Claimant

pursuant to a very lengthy Witness Statement running to some 46 pages and the Claimant was subject to cross examination on that evidence lasting a day and a half.

20. Much of the Claimant's claims as set out in the List of Issues are based on incidents upon which the Claimant relies as being the acts complained of, or the detriment suffered. We will deal with each one of these in turn. However, we are bound to say that in the great majority of instances where such incidents have been relied upon, the Claimant's evidence is significantly disputed by evidence put forward by the Respondent's witnesses and in many cases by the documents before us in the Bundle. We do not doubt the sincerity of the Claimant's belief in what he is telling us. However, we found much of what he recounted in respect of those incidents to be unreliable. We were impressed by the evidence we heard from all of the Respondent's witnesses and where there is dispute on the evidence, we prefer the evidence of the Respondent's witnesses. We must stress that this does not suggest that the Claimant was deliberately trying to mislead the Tribunal. Recollections vary, but on balance we found the evidence of the Respondents to be more believable. Often more than one witness was able to give evidence as to a particular incident.

21. We will deal with each and every one of these in turn, but it is important that we make this general point about the evidence before us.

22. The subject of this claim essentially started in early spring of 2020. The Claimant needed time off to attend medical appointments. The Claimant told Tom Forrest, the Farm Manger and his immediate superior, that he needed such time off and Tom Forrest became aware that the Claimant was undergoing examination in respect of Chronic Fatigue Syndrome.

23. As a result, Mr Forrest had a meeting with the Claimant to discuss what adjustments the Respondents could make to assist the Claimant in the performance of his duties in light of his Chronic Fatigue Syndrome. Pursuant to that meeting Tom Forrest set out a plan and recommendations to make adjustments to the Claimant's role. In this respect he liaised with Beth Mleczek of HR and had sight of an Occupational Health Report concerning the Claimant's conditions.

24. Amongst these adaptations were that the Claimant was relieved from having to do any drain jetting in the winter as this was very physically demanding. He was also relieved of the necessity to do quad bike spraying which was also physically demanding. Efforts were made to keep the Claimant out of particularly cold and wet periods outside when desk based jobs could be assigned to him. His hours were cut and weekend work was also cut to allow him more rest periods. Discussions were had with the other members of the spray Team who included James Slaven and Rob Coles to the effect that other members of the Team would have to pick up the slack. In the spring of 2020 Mr Forrest made significant changes to the spraying workload and the Claimant was allocated the less physically demanding

work. James Slaven took the majority of the onion work and Rob Coles the potatoes.

25. The Claimant was told that he should manage his own time and take breaks whenever he needed them. The Claimant is a very strong individual who had his own particular method of working and we accept that it would not have been appropriate to micro manage him in respect of his daily activities. He was given free rein to take breaks as and when he felt it was appropriate and we consider that the Respondents behaved responsibly in the way in which they assessed his impairment and put in place adjustments to assist him in his role as a result. This is borne out in subsequent medical evidence before the Tribunal in the Occupational Health Report from a company called Corazon.

26. We accept Mr Forrest's evidence that the Claimant was authorised to manage his hours and his breaks and to work at a sustainable pace. He was never given a deadline and was told *"see what you can do"* and if he only got half, say 50 acres done instead of 100 acres, it still left 50 acres less for the other Operators to cover.

27. There is dispute on this evidence, but we accept the evidence of Tom Forrest and the other witnesses of the Respondent who gave evidence on the Claimant's allegation that he was subjected to an increased workload in May 2020. Rob Coles gave evidence which we accept, that the job of spraying is very seasonal and May is definitely the peak because there is the tail end of cereals, blight (potatoes), onion and sugar beet herbicides. There could also be difficult weather issues in May. We accept the evidence of Tom Forrest that he oversaw the workload of the Claimant, James Slaven and Rob Coles. He allowed the Claimant to choose from the Spray Plan first as to which task to take on. The adjustments agreed in April remained in place. The Claimant had permission to manage his rest periods to avoid any fatigue. The arrangement that allowed him to do physically easier work was not changed.

28. It is true and the Tribunal accepts, that to an extent the Claimant was left to manage his own breaks. Adjusted breaks were not imposed upon him. The Claimant had a difficult working relationship with his colleagues and worked in a very individual way. For example, he would when spraying refuse to fill up the spray machine with water from bowsers out on the farm and would insist on returning to the yard to do so. No one criticised him for this or stopped him doing this. It was one of the rather unusual ways that we accept the Claimant adopted as part of his working method. We accept that the Respondents tried their upmost to alleviate anything that caused the Claimant difficulties. They did, however, expect him to manage his own workload, hours and rest periods. He was only ever asked and expected to work at his own pace. We entirely accept that given the Claimant's character, his behaviour and his relationship with his colleagues, it was not appropriate or possible for the Respondents to micro manage his workload

as he would have strongly resisted such an approach. We cannot criticise the Respondent's approach to the adjustments that were agreed in April and we do not accept that this approach changed.

29. Where there is divergence in the evidence, we accept the evidence of Rob Coles, James Slaven and Tom Forrest over that of the Claimant. We arrive at this conclusion on the balance of probabilities having heard evidence in support of the Respondent's position from three witnesses and only evidence in support of the Claimant's position from the Claimant himself.

30. The Claimant's method of working created tremendous friction between him and James Slaven and to an even greater extent, Rob Coles. We heard evidence from Rob Coles and James Slaven that the Claimant was very difficult to work with. We accept their evidence in this respect. We also accept that there had been a throughput of those working in the spray shed as a result of the fact that others found it very difficult to work with the Claimant. We accept that the Claimant went out of his way to be difficult towards James Slaven and Rob Coles. The Claimant would frustrate both James Slaven and Robert Coles in the performance of their duties and would regard the Spray Shed as his own personal domain. The relationship between James, Robert and the Claimant became so fractured that James Slaven and Robert Coles actually commenced work at 6am, thirty minutes before they were due to start, so that they could get their equipment ready to go out spraying without the necessity of having to have any interaction with the Claimant.

31. We accept Robert Coles' evidence that the Claimant was unapproachable and did not communicate well with the Spray Team. We also accept that the Claimant had his own way of doing things and did not liaise with his co-workers concerning how best to communicate vis a vis the tramlines in the crop fields that needed to be used to effect the spraying. We accept the Respondent's evidence that his failure to liaise properly and communicate about these tram lines contributed to the Claimant getting stuck in the field on 23 June 2020.

32. There was a meeting on 4 June 2020. Present at that meeting were Tom Forrest, Steven Tortice, James Slaven, Rob Coles and the Claimant. Here it was discussed that the Claimant needed to be subject to adjustments and that the others would be expected to pick up the slack. At this same meeting both James Slaven and Rob Coles attempted to express to Tom Forrest why they were finding working life so difficult with the Claimant. They attempted to have an open and honest discussion, but the Claimant was not prepared to enter into such a discussion and he left the meeting.

33. The Claimant produced a statement of Fitness for Work indicating that he was not fit to work to Tom Forrest on 23 May 2020. However, that Fitness for Work Certificate was dated 16 April 2020. We find that the Claimant had chosen to withhold it until it suited him. This was strange behaviour that the

Tribunal considers and Tom Forrest had no alternative but of course to react to that Certificate and at that point the Claimant went off sick.

34. The Tribunal considers the evidence it heard from James Slaven to be reliable. He was not challenged on the evidence that he said that both he and Robert Coles had no problem at all with the adjustments that were put in place for the Claimant as a result of his disability. We find that there was no resentment by James or Robert in this respect.

Spray Shed

35. Part of the Claimant's claim in these proceedings and amongst the incidents the Claimant relies upon is the allegation that James Slaven deliberately locked the Claimant out of the Spray Shed towards the end of the day when the Claimant was still working and would need to access it. We do not accept the Claimant's evidence in this respect. We accept the evidence of James Slaven. Since a break-in in 2018, it had been necessary to apply further security devices to the Spray Shed. This includes strapping the Spray Shed door down and putting the fork lift away. We accept that James Slaven locked the Shed, but he did not do it deliberately, he did it without knowing that the Claimant was still out working and he did it perfectly legitimately as a security measure. In any event, during cross examination the Claimant accepted that he was not locked out of the Shed and could access the Shed through a different door. This is an example of the Claimant exaggerating his evidence to support incidents in his claim upon which he seeks to rely.

36. Once again, we stress we do not criticise the Claimant for this. We believe he genuinely believes some of the allegations, but when tested we found many of them to have little or no substance.

37. We also consider the evidence of the Respondent's witnesses concerning the arrangement of the Spray Shed to be sound and reliable. James Slaven, Robert Coles and Tom Forrest gave an account of the arrangement of chemicals within the Spray Shed which the Claimant argues was done deliberately whilst he was away and in this respect, he relies upon it in his claim under s.44 ERA 1996. He says that his complaint raised in his Grievances about the way in which the Spray Shed was organised in his absence amount to complaints of a Health and Safety nature.

38. We accept that the Claimant liked to organise the Spray Shed in a particular way. But the fact that it was reorganised by James Slaven and Rob Coles in the Claimant's absence on sick leave, was not done deliberately, nor is there any evidence to suggest that there was anything unsafe or unlawful in the way they reorganised the Shed. The Claimant liked to organise the Shed so that the onion chemical was on one side and the potato chemical was on the other. However, perfectly reasonably and at a very busy time when chemicals were in significant use and there was a lot of them in the Spray Shed due to stock piling as a result of the fear of chemicals being in

short supply throughout Covid, Rob Coles and James Slaven arranged it by herbicides (weed killers), fungicides (chemicals that get rid of fungal diseases), adjuvants (a chemical that makes chemicals stick to the leaf) and insecticides (kills insects that are pests). We find this entirely reasonable.

39. The Tribunal finds that it is likely that the reason the Claimant produced the 16 April 2020 sick note on 23 May 2020, was that he had been upset by a note left on his diary by James Slaven. This was before us. James Slaven gave evidence to the effect that he was simply retaliating in a sense in that the Claimant often left curt notes for Rob Coles and himself. We see nothing untoward in this note other than it illustrates the fractious relationship that existed between the Spray Team.

40. We accept that the Claimant behaved poorly and accept the evidence of Tom Forrest that the Claimant entered into a campaign of irritating and antagonising Rob Coles and James Slaven by locking the door to the Shed unnecessarily, hiding pipe, picking fault with their work, telling tales to Tom Forrest and generally trying to get them into trouble about petty things. It is not surprising that James Slaven responded. The Claimant continued to make his colleagues lives awkward, he made them feel unwelcome, he picked fault in everything including their work and we accept that there is sufficient evidence to suggest that two previous Sprayers, Krys and Sheamus, left after having been subject to similar behaviour perpetrated by the Claimant.

41. The Claimant remained off sick and further sick notes were provided. These took the Claimant to 7 October 2020.

42. In light of the nature in the way in which the Claimant's claim has been put, it is necessary for us to go through incidents in respect of which the Claimant relies, and make findings of fact in respect of each of them.

Grievances

43. As a result of the note left on the desk in the spray shed by James Slaven, the first of the Claimant's Grievances was lodged on 23 June 2020. There then followed further Grievances on 14 July 2020, 30 July 2020, 19 October 2020 and 24 February 2021.

44. However, we find that these Grievances are really just complaints about the differences in opinion between the Claimant and his colleagues and illustrative of the fractious relationship between them. The Claimant believes that he was being bullied by his colleagues. The Tribunal does not consider this is borne out by the evidence we have heard on the balance of probability. We consider that the Claimant was genuinely of the view that the disputes between him and his colleagues were bullying, but we do not consider that this was the case. We have set out why we think there was a fractious working relationship above.

45. The first two Grievances were the subject of a meeting between the Claimant and Beth Mleczek on 22 July 2020. The Claimant left this meeting and raised a further Grievance the following day. We accept Ms Mleczek's evidence that she was attempting to resolve what essentially was a series of complaints about the working relationship between the Claimant and his colleagues by dealing with those complaints informally. We consider that to have been a very sensible and appropriate course of action at the time.

46. In his Grievance dated 30 July 2020, it is interesting that the Claimant makes the point that his last two sick notes really should have been on the basis of work related stress only and not related to his ME / CFS. He says in his second paragraph that his absence has never been about his health apart from a single 24 hour period due to over exertion.

47. This rather illustrates the fact that much of the Claimant's absence and his unhappiness which led to the claims before us, was not related to any treatment meted out to him which related in any way to his disability. The Grievances and his continued absence throughout the summer and autumn of 2020 through to his resignation the following year were really as a result of his unhappiness about the working relationship he had with his colleagues.

48. That is why we consider that it was entirely sensible for the Respondents to attempt to resolve those complaints amicably. Pursuant to the meeting on 22 July 2020, Beth Mleczek went back to the Claimant with four options. These were:

    a. Transferring to another role within the business;
    b. The appointment of a Mediator to try and solve the apparent differences between those in the Spray Team;
    c. A return to work; and
    d. A mutual agreement for the Claimant to leave the business.

49. A meeting was planned to consider these options. This took place on 31 July 2020. At this meeting the Claimant appeared to embrace the possibility of Mediation. Alternatives were discussed, but there was nothing that the Claimant was interested in.

50. We accept then that the Respondents did their best through Beth Mleczek to proceed with Mediation. Every attempt was made to facilitate this through ACAS. We do not accept the Claimant's argument as valid that the Respondents deliberately avoided dealing with his Grievances. It was natural for the Grievances to be held in abeyance until such time as the Mediation could be arranged. Ultimately, however, despite best efforts the Claimant made it clear pursuant to a three hour Mediation telephone call with ACAS, that he no longer wished to go down the Mediation route and wanted his Grievances to be dealt with formerly. By this time it was already September and on 21 September 2020 a Grievance meeting took place to

deal with the Claimant's Grievances formerly and this was conducted by Neil Sturgeon.

51. We do not consider that there was an unreasonable delay in the way in which the Respondents dealt with the Claimant's Grievances. With the Claimant's acquiescence there was a genuine attempt to pursue Mediation. It was clear that the Grievances related purely to the working relationship between the Claimant and his colleagues. There was little or nothing to do with the Claimant's disability that was involved. We consider that Beth Mleczek's attempts and approaches were entirely appropriate. As soon as the Claimant indicated he no longer wished to pursue Mediation, the Respondents appointed Neil Sturgeon to conduct a formal grievance process.

52. It should also be remembered that this was in the middle of the Covid pandemic when much of the country was in lockdown. We consider that the Respondents dealt with their responsibilities vis a vis the Grievances with all reasonable swiftness.

53. Mr Sturgeon then conducted a comprehensive Grievance process which included a detailed investigation seeking evidence from the principle players in this matter, the Claimant. This resulted in a Recommendation and Report produced on 16 October 2020. This was subsequently appealed by the Claimant.

54. The Tribunal also heard from Mr Sturgeon that all Appraisals of all staff had not been conducted in 2020 in accordance with Policy due to the exceptional circumstances the Respondent was placed in due to the Covid pandemic. We find no difference in treatment of the Claimant in this respect to anyone else at the Respondent's.

55. The Claimant was off sick between 23 May 2020 and 7 October 2020. He attended at work on 8 October 2020 and what happened at that Return to Work interview and the subsequent events surrounding it is in much dispute.

56. The Tribunal heard evidence from Mr Forrest as to what happened on the Claimant's return to work and from Ms Mleczek. Where there is dispute as to the events of 8 October 2020 and the following subsequent days, we prefer the evidence of Mr Forrest and Ms Mleczek on the balance of probability. Much of the Claimant's evidence appears to be contradictory.

57. The Claimant had written to the Respondents on 13 September 2020 indicating that he did not propose to return to work until his Grievances had been dealt with. By 8 October 2020, Mr Sturgeon had not completed his Report, yet the Claimant attended for work. He declared himself to be unhappy to be there. Completely understandably, Mr Forrest accepted that the Claimant's sick note had expired and proposed a phased return to work in complete alignment with the Corizon Health Report dated 30 September 2020. In the Tribunal's view it would have been entirely wrong and improper

for Mr Forrest to do anything else other than seek to implement the recommendations of that Health Report, produced only a week earlier. The Claimant, however, was not happy to do this. We accept the evidence of Mr Forrest that he was left in no doubt by the Claimant that he did not wish to return to work on that basis. On the afternoon of 8 October 2020, Mr Forrest and Ms Mleczek discussed with the Claimant the option that the Claimant should perhaps use up some untaken holiday and then start a phased return to work on 19 October 2020, in accordance with the Corizon Health Report. The Claimant agreed and this is evidenced in documentation before us in the Bundle.

58. In the interim Mr Sturgeon produced his Report which included various recommendations which were then shared with the Claimant. The Claimant then appealed against that outcome in an email dated 19 October 2020 and raised a further Grievance on 19 October 2020. In that Grievance the Claimant denies that he ever agreed to a phased return to work and says that he is fit to work on full contracted hours on the basis of the adjustments which had been agreed earlier in the year. He complains that he was forced into taking holiday and therefore opines that he must have been on garden leave.

59. For the avoidance of doubt, the Tribunal considers the Claimant to be confused and where there is dispute as to what happened on 8 October 2020, we prefer the evidence of Mr Forrester and Miss Mleczek. It would, in the Tribunal's view, have been entirely inappropriate for them to propose the Claimant's return to work on a full hours basis in contradiction of the medical evidence.

60. The very final paragraph of that 19 October 2020 Grievance is the first time that the Claimant mentions "disability discrimination".

61. It then subsequently emerged that the Claimant had issued proceedings in this Tribunal actually some time earlier on 22 August 2020, on the basis that the Claimant had been dismissed. There then took place an exchange between Solicitors instructed by the Respondents and the Claimant, in which the Claimant accepted that he had not been dismissed. This correspondence was before the Tribunal. We do not propose to repeat the contents in detail. The Claimant indicated that he was proposing to withdraw the claim due to the mistake concerning his dismissal and he purported to do so save for any claims relating to disability only. The Claimant remained off work during this period, but it is necessary to point out that throughout the whole of the Claimant's sickness between 23 May 2020 and his absence from work post October 2020 through to his resignation in March 2021, he received full pay. The correspondence with the Solicitors in October and November 2020 evidences an attempt to seek a resolution to the Claimant's issues, but nothing was resolved.

62. The Respondent's Solicitors did send through a document headed 'Garden Leave Agreement' which was never completed and sought to undertake

private mediation with a view to resolving the Claimant's difficulties and outstanding Grievances and Appeals. It is perhaps unfortunate that the phrase 'Garden Leave' was used by those acting for the Respondents as this more commonly denotes a period of leave once an employee has been given notice of dismissal. As a matter of fact, we consider that this had not happened and that the use of the phrase was inaccurately applied. Those acting for the Respondents were attempting to negotiate a process of private mediation with the Claimant and there was nothing that was in any way imposed upon the Claimant throughout this process. Essentially, all that those instructed by the Respondents were seeking to do was to put into practice a negotiating procedure which reached an outcome with which the Claimant was happy. We accept the Respondent's evidence in this respect. We understand how it must have been confusing for them in light of the nature of the correspondence before us and the contradictory nature of the Claimant's comments.

63. The Claimant remained employed and fully paid, albeit that he was not attending work. We do accept that the Claimant's behaviour could best be described throughout this process as erratic. He was clearly confused and the Tribunal finds that the Respondents did nothing other than to attempt to assist him. That these negotiations continued through to Christmas of 2020 with attempts being made to arrange a private mediation at the expense of the Respondents. This process continued through January 2021. The Respondents offered to pay for the Claimant to be advised and represented by a qualified Lawyer at a private mediation.

64. The Claimant issued another Grievance on 24 February 2021 concerning specifically the cancellation of his NROSO registration and he referred to the Grievance raised on 19 October 2020 which he said he wished to be dealt with.

65. On 8 March 2021, the Claimant again pressed for the Grievances to be dealt with and on 11 March 2021 those acting for the Respondents contacted the Claimant and pointed out that it was unhelpful for the Claimant to be pressing for Grievances to be heard when there was an attempt to have a mediation process undertaken at the expense of the Respondent. It would appear that those attempts had failed.

66. The Claimant then wrote to the Directors of the Respondent on 17 March 2021 formally resigning. In the resignation letter he cited a list of failures which form part of his claim before this Tribunal.

67. The Tribunal finds that the Respondents throughout the period from October 2020 through to the Claimant's resignation, did all that they could to assist and help the Claimant in seeking a resolution to his issues. They had dealt with the Claimant's Grievances up to September of 2020 and sought to achieve a resolution by private mediation, at their expense, with independent Lawyers advising the Claimant, at their expense, but ultimately the Claimant was not happy to proceed on that basis.

68. It is also necessary that we make findings of fact in respect of other allegations raised by the Claimant. These sit outside the general sequence of events as outlined above and we will deal with them separately.

Point 5.2 of the List of Issues

"The Respondent failing to offer alternative work that was suitable."

69. Whilst it is not clear what the Claimant refers to here, the Tribunal finds as a matter of fact that the Respondents did everything they could to find suitable work for the Claimant. This is particularly so at the Return to Work meeting on 8 October 2020 when they sought to follow to the letter the phased return suggested by the Corizon Health Report.

Point 5.4 of the List of Issues

"Tom Forrest stating that it was not fair on the other employees for the Claimant to have an easier workload."

70. We heard evidence from Tom Forrest on this and he denied that he said this. We accept his evidence. It is difficult to be clear about when the Claimant says this took place, but he indicated that it was on 5 September 2020. In any event, we do not accept on the balance of probabilities that it was said. 5 September 2020 was also potentially an inadmissible conversation before this Tribunal, but irrespective of that, the comment was not put to Mr Forrest in cross examination and we do not find that he said it.

Point 5.6 of the List of Issues

"After 25 May 2020 James deliberately took Mr Evans' parking space outside the Spray Shed."

71. The Tribunal finds that this did not happen. It is the case that Tom Forrest agreed that the Claimant could park outside the Spray Shed, but there was no allocated space. We find that James Slaven was not aware of this arrangement and he also parked outside the Spray Shed in the belief that three vehicles could adequately park there. He did not believe that by parking there he was depriving Mr Evans of the ability to park there nor did he.

Point 5.7 of the List of Issues

"Week beginning 8 June 2020 (possibly 9 or 10 June) Mr Paul Churchyard told the Claimant endorsed by the Claimant's Manager Mr Tom Forrest that the Claimant could not take his van to work anymore and that he would have to walk to work."

72. The Tribunal finds that Paul Churchyard did tell the Claimant he could not park outside the Spray Shed as he was unaware of the arrangement the

Claimant had reached with Mr Forrest. However, the Claimant was not singled out in any way as a similar instruction was issued to James Slaven and Robert Coles who had also been parking there. Mr Churchyard told the Claimant this due to the fact that there was designated staff parking nearby. We do not find on the balance of probability having heard the evidence that the Claimant was told he could not take his van to work anymore and that he would have to walk to work. We find the Claimant's evidence on this point to be inconsistent.

73. After this the Claimant chose to walk to work rather than use the much nearer staff car park and he was unable to explain why in cross examination. We do not accept that Mr Churchyard's instruction was endorsed by Mr Forrest in contravention of the earlier agreement between Mr Forrest and the Claimant. This was not put to Mr Forrest in cross examination.

Point 5.8 of the List of Issues

"From 20 May onwards with the endorsement of Mr Tom Forrest, James was permitted to allocate the Claimant heavy and difficult work."

74. The Tribunal does not find that this was the case. If and insofar as that has not been made plain in our general findings of fact above, we endorse that here. There was little detail as to what the Claimant meant by this allegation, but our findings of fact above demonstrate that the Respondents did everything they could to make the Claimant's work easier from April 2020. There is no evidence before the Tribunal that the Claimant's work from 20 May 2020 became markedly more difficult nor that it was so because it was allocated to the Claimant by James Slaven. Any allocation of work could only have been carried out by Mr Forrest. There is no evidence before us to support this assertion.

Point 5.9 of the List of Issues

"After 14 May 2020, James made harsh and uncalled for remarks to the Claimant because he was doing easier work. His manner changed from that date onwards and it was the manner more than what was said that was most hurtful. James thought the Claimant was doing more work only because it was easier work."

75. This is unclear and the Claimant has not articulated what harsh and uncalled for remarks he alleges were made. Nothing in this respect was put to James Slaven, there is no evidence before this Tribunal to support this assertion. We do not accept that this was the case.

Point 5.10 of the List of Issues

"On 23 June 2020, finding himself stuck in a field, the Claimant had to lie on his back in mud digging out a machine whilst four others stood by and watched."

76. We heard evidence from Tom Forrest, Steven Tortice and Paul Bryant of the Respondent, as well as from the Claimant, as to this incident.

77. Paul Bryant is a tractor driver at the Respondent and Steven Tortice is the Land Operations Manager at the Respondent. Tom Forrest is the Farm Manager and the Claimant's Line Manager. Those three witnesses give a very different version of events to that set out by the Claimant as to what happened in this incident. Where there is dispute we accept the evidence on the balance of probability of the Respondent's witnesses. The Claimant got stuck in a field whilst spraying. It seems likely that this was exacerbated by the fact that the Claimant sought to practice different methods of spraying from other sprayers and failed to use appropriate tram lines.

78. Nevertheless, we accept the evidence of those witnesses of the Respondent that every effort was made to extricate him. Paul Bryant attended with an 8XR tractor to pull the sprayer out. This having failed, Mr Forrest arranged for a 360 digger to dig the sprayer out. There is no evidence to support the Claimant's assertion that he was left to struggle on his own while those around him stood by and watched. The Claimant did not at any stage indicate that he was exhausted, or that he could not carry on. Steven Tortice gave evidence that had this been the case, he would have been relieved of his duties as there were sufficient staff on had to undertake the excavation. The Respondents did not seek in any way to discipline the Claimant for this time consuming and costly interruption to the day's work, even though they might have been justified in doing so.

Point 5.11 of the List of Issues

"On 15 May 2020, James deliberately falsely completed a Spray Record to suggest that the Claimant had completed a Spray Plan (10 – 15 fields). It was only discovered when the next Spray Plan came to be done that the Claimant realised he had not done the one on 15 May 2020."

79. We heard evidence from James Slaven from the Respondent in this respect. James Slaven admitted that he had made an error on one occasion in the completion of the Spray Record. He explained that there was a drop down menu where one needed to change the name of the Operator within the system as recorded on an iPad and he had failed to do that. It was an oversight in changing the name of the Operator within the system which he failed to do. Having heard evidence from Mr Slaven the Tribunal does not accept, on the balance of probability, that it was done deliberately to in some way cause difficulty for the Claimant. When asked about it at the time by Mr Forrest, Mr Slaven admitted his mistake immediately.

Point 5.12 of the List of Issues

"The Respondent wrote unfair statements to prejudice an Occupational Health Report and without notifying the Claimant of the content in advance."

80. It is understood, although it is not clear, that the Claimant's complaint relates to the statement made in the Occupational Health Referral which is before this Tribunal, which states as follows:

> *"John is unable to complete as much work as a fully fit member of the team."*

81. The Claimant described this as him being portrayed as a cripple. This is simply not true. It is indicative of the exaggeration of evidence we have experienced by the Claimant before this Tribunal and the deliberate "gilding of the lily" of events to suit the Claimant's view of them. This is also a further example of how the Claimant has continued to contradict himself throughout his giving of evidence before this Tribunal. On the one hand he claims insufficient adjustments were made to accommodate his disability, yet on the other here he argues that a reasonable attempt to describe, in an Occupational Health Referral, the difficulties he was facing was unfair. The Tribunal does not accept that as a matter of fact.

82. There are one or two other issues of fact which we need to make findings on which have not been covered in our general findings of fact, or our more specific references above. These appear in the List of Issues. They appear under the claims in harassment.

Point 13.4 of the List of Issues

"The Respondent advertising the Claimant's position whilst he was suspended."

83. The Tribunal has the advertisement in question before it. We heard evidence and it is plain to see that the advert is not an advertisement of the Claimant's position. The advert does not give the same location as the Respondent. It is seven miles away. An email from the Recruitment Agency in question confirms that the job of the Claimant was not advertised by the Respondent. The Claimant has made an erroneous assumption.

Point 13.6 of the List of Issues

"The Respondent failed to respond to a request from the Claimant to access his home in line with the Garden Leave Clause."

84. It is difficult to make sense of this allegation. There is no evidence to suggest that any actions of the Respondents, or those instructed by them, sought to prevent the Claimant accessing the property he occupied on the Respondent's premises. There was much evidence adduced about the Claimant wishing to move to Wales and in cross examination the Claimant accepted that he had purchased a property in Wales some considerable time before he resigned from the Respondents. The suggestion is that he was intending to leave the Respondent and go and live in Wales and that the reason for his resignation was not as he suggests in these proceedings. He accepted that he did, during the period prior to his resignation, spend a

great deal of time in Wales where his Sister lived. He accepted that he had a property there. He claims that he bought that property to rent out. Albeit, he said that he ended up living there. We deal with this later in connection with the Claimant's claim for constructive unfair dismissal.

Point 13.7 of the List of Issues

"The way an allegation of serious assault of the Claimant was investigated."

85. This relates to questions asked in an investigation meeting on 25 September 2020, by Steven Tortice. We had the notes of the meeting before us. These questions were put together for Steven Tortice to ask to the Claimant by Beth Mleczek of HR having taken external advice.

86. The Respondents were investigating a serious allegation of assault raised by the Claimant, alleged to have been perpetrated by another employee. It is accepted that an interview was therefore necessary for the Respondents to properly deal with that allegation. The Tribunal accepts that Steven Tortice found the situation difficult and stuck to the script that he was given, perhaps giving a somewhat robotic and impersonal gloss to the process. However, we do not criticise Mr Tortice for this. He was placed in a difficult situation. We do not accept that it demonstrated that the Respondent was in any way indifferent to the Claimant's welfare or needs. Rosie Bartham of the Respondent attended to ensure the Claimant's welfare. The Claimant did not raise any issues at the time and did not do so until these proceedings.

Point 13.8 of the List of Issues

"On 15 September 2020, Tom Forrest stated that the Claimant was not fit to work and compared other workers who were younger than him."

87. It is not clear when this is alleged to have happened, but it is believed to be a conversation on 15 September 2020. The Tribunal has already indicated that it does not accept the allegation of a comment made by Tom Forrest in that meeting earlier. Once again, we do not accept on the balance of probability that such a comment would have been made. If any similar comment was made, we do not accept that it in any way highlighted the difference in age between the various Spray Operators, but may have highlighted that they were carrying out difficult work.

88. There are some findings of fact that need to be made that have not already been dealt with above which relate specifically to the Claimant's claims in Victimisation. These are as follows:

Point 19.7 of the List of Issues

"The Respondent cancelled a direct debit for the Claimant's National Register of Spray Operators (NROSO) subscription without informing the Claimant, on 25 January 2021."

89. The Respondents admitted to the Tribunal this happened. This was a misunderstanding. We heard evidence from Neil Sturgeon on this point, which we accept.

Constructive Unfair Dismissal Claim

90. There are certain issues raised in the constructive unfair dismissal part of the List of Issues which require the Tribunal to make findings of fact. We have made findings of fact in respect of many of the allegations which the Claimant alleges independently or cumulatively amount to a repudiatory breach of the implied terms or express terms of the Claimant's contract of employment. We deal with only those which we have not already dealt with above.

Point 20.7 of the List of Issues

"The Respondent sending the findings of a Grievance Investigation dated 16 October 2022 to ACAS and the CAB before sending them to the Claimant"

91. The Respondents accept that they did this. However, it is worth noting that they were in communication with ACAS and the CAB at the time. The CAB were at that time assisting the Claimant. The outcome was also sent promptly to the Claimant direct.

Point 20.8 of the List of Issues

"The Respondent allowing by default smoking to take place in vehicles and enclosed spaces, including chemical and food stores, even though that was illegal and after the Claimant had reported suffering ill effects"

92. The Claimant did not deal with this in this tribunal. The Respondent has designated smoking and non-smoking areas. We do not consider that sufficient evidence was put before this Tribunal to convince us on the balance of probability that the Respondents did allow smoking to take place in areas that were prohibited.

Point 20.9 of the List of Issues

"The Respondent allowing other employees to rearrange the Spray Shed making working conditions unsafe and dangerous and preventing the safe use of the fork lift and working platform within the Shed"

93. The Tribunal has already dealt with this, for the avoidance of doubt, we do not consider that the rearranging of the Spray Shed in any way made conditions unsafe and dangerous. There is simply no evidence before us to suggest that. In fact all evidence suggests otherwise.

Point 20.10 of the List of Issues

"The Respondents stating that, "other people have different ways of working, if you cannot accept that, you are not a team player, we are listening to you, you are not listening to us" *in response to the Claimant raising the issue of dangerous working conditions within the Spray Shed which also made it impossible for the Claimant to minimise his manual handling"*

94. It is difficult to be clear as to precisely what the Claimant is referring to here. He had adduced little or no evidence to support this assertion. However, it appears to be the meeting of 22 July 2020, attended by Matthew Abery and Beth Mleczek. We heard from Ms Mleczek on this issue and we accept her evidence and do not accept that Mr Abery accused the Claimant of not being a team player. Beyond that point we see nothing untoward in comments made by Mr Abery.

Point 20.14 of the List of Issues

"The Respondent failing to maintain adequate contact with the Claimant when not attending work and not seeking clarification when told of the reasoning made in 2020"

95. Once again we are not entirely clear what the Claimant is alleging here. For the avoidance of doubt, we do not consider that the way in which the Respondents dealt with the Claimant's absences between May and June 2020 was anything untoward. In fact, it is the Tribunal's general view that throughout the whole period from April 2020 right through to the Claimant's resignation, the Respondents bent over backwards to assist the Claimant and tried to find a resolution to his issues. This is evidenced by the fact that they continued to pay him full pay throughout when it would have been entirely possible for them to consider much of his absence as sickness absence. They did not.

General Findings of Fact concerning the Claimant's resignation

96. We are persuaded by the submissions of Mr Northall that there is simply insufficient evidence on the balance of probability for us to conclude that the Claimant resigned in response to any perceived breach on the part of the Respondent.

97. Evidence that had emerged throughout the Tribunal leads us strongly to believe that the Claimant had intended to leave the Respondent at some point in 2020 / 2021 to relocate to Wales and retire. We are reminded of the

GP entry of 9 March 2020 in the Bundle before us which reflects this and evidence we have heard from James Slaven who told the Tribunal that the Claimant often mentioned his intention to retire to Wales in 2021. We were impressed by the evidence of Mr Slaven and accept his evidence over the Claimant's.

98. We also accept Mr Northall's submissions set out at paragraph 132 of his written submissions. The Claimant stated on 30 July 2020 that he was finding alternative accommodation. This was despite the fact that there was no suggestion from the Respondents at that time that the Claimant's employment or accommodation were at risk. He also made an offer on a house in July 2020. The Claimant was reluctant to return to work on a phased basis and he vacated the accommodation in or about the time he completed on the property in Wales in November 2020.

99. We do not, therefore, consider on the balance of probabilities that there is evidence before us that the Claimant left the Respondent's employment in reliance on any perceived breach.

100. The Claimant also pursues a detriment claim under s.47B ERA 1996. It is necessary for us to make one or two findings of fact that are not already made above.

Point 32.2 of the List of Issues

"The Respondent expressed a preference for the Claimant to leave his employment"

101. We have already dealt with this above, but for the avoidance of doubt we find no evidence to suggest that this was the Respondent's preference. All the evidence suggests otherwise. They did everything they could to try and get the Claimant back to work and when it was clear that he was not interested in coming back to work, they then did everything they could to achieve a sensible and amicable settlement. It was offered to the Claimant as an option to negotiate a termination of his employment no more than that.

The Law

102. The Equality Act 2010

> 15. Discrimination arising from disability
>
> (1) A person (A) discriminates against a disabled person (B) if-
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

20. Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

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

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

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

21. Failure to comply with duty

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

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

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

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.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- race;
- religion or belief;
- sex;
- sexual orientation.

` 27. Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

103. The Employment Rights Act 1996

94. The right

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

95. Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)—

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

104. Detriment for Dismissal Relating to a Breach of the Working Time Regulations 1998

45A Working time cases

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker—

(a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the [S.I. 1998/1833] Working Time Regulations 1998,

(b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,

(c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,

(d) being—

(i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or

(ii) a candidate in an election in which any person elected will, on being elected, be such a representative,

performed (or proposed to perform) any functions or activities as such a representative or candidate,

(e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or

(f) alleged that the employer had infringed such a right.

105. The Employment Rights Act 1996

101A Working time cases

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the **M1** Working Time Regulations 1998,

(b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,

(c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations, or

(d) being—

(i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or

(ii) a candidate in an election in which any person elected will, on being elected, be such a representative,

performed (or proposed to perform) any functions or activities as such a representative or candidate.

44. Health and safety cases

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,

(b) being a representative of workers on matters of health and safety at work or member of a safety committee—

(i) in accordance with arrangements established under or by virtue of any enactment, or

(ii) by reason of being acknowledged as such by the employer,

the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),

(c) being an employee at a place where—

(i) there was no such representative or safety committee, or

(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(1A) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that—

(a) in circumstances of danger which the worker reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, he or she left (or proposed to leave) or (while the danger persisted) refused to return to his or her place of work or any dangerous part of his or her place of work, or

(b) in circumstances of danger which the worker reasonably believed to be serious and imminent, he or she took (or proposed to take) appropriate steps to protect himself or herself or other persons from the danger.

47B Protected disclosures

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

(a) from doing that thing, or

(b) from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and

(b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).

Submissions

106. The Tribunal heard extensive submissions from Mr Northall for the Respondents and we are grateful for written submissions extending to some 27 pages. We were able to allow the Claimant plenty of time to prepare submissions which he gave orally. We accept that the Claimant is not a legally qualified person and has not had legal advice throughout these proceedings, therefore he was not able to direct us to the Law in the same way that Mr Northall was. We do not propose to repeat those submissions here.

Conclusions

General Comments

107. The Claimant pursues a suite of claims and is self represented. He is not a lawyer and has not been legally advised. We have adhered to the List of Issues agreed by the parties which runs to some 8 pages. We have used this extensively in making findings of fact. In cases such as this where the Claimant is unversed in the Law, it is necessary to stick to a structure of that nature.

108. The majority of the Claimant's claims relate to a disability and are for disability discrimination.

109. The Claimant relies on Myalgic Encephalomyelitis; this is more commonly referred to as ME or CFS (Chronic Fatigue Syndrome).

110. The Respondents admit that the Claimant was a disabled person within the meaning of s.6 EqA 2010 at all material times.

111. The Claimant does not rely upon any mental impairment.

112. It is important for the Claimant to show a relation between disability and the treatment which he claims.

113. In respect of the s.15 claim, he has to show that treatment alleged, if proven, was treatment because of "something" arising from the disability.

114. In respect of his claim for harassment, he has to show that the treatment was related to the disability.

115. In respect of his claim for reasonable adjustments, the Claimant has to show that the relevant provision, criterion or practice placed him at a substantial disadvantage by reason of his disability and that the proposed adjustment would alleviate the disadvantage to material extent.

116. In respect of the claim for victimisation, he has to show that the alleged protected acts qualify for protection under s.27(2) EqA 2010 and that the treatment proven was because of the protected act.

117. Mr Northall reminds us of the extensive evidence we have heard from the Claimant and his lengthy questioning of the Respondent's witnesses. We are persuaded and accept Mr Northall's submission that the Claimant has not at any stage in progressing his claim, focused on the relationship between the treatment that he says he received and the disability.

118. The Claimant's claims are more akin to a list of grievances he feels he suffered at the hands of his work colleagues. This arises out of the breakdown in the relationship between him and his colleagues. Nowhere in his claim has he even attempted to show a link between the incidents which evidence this breakdown and his disability. It is clear to the Tribunal that this all came as an afterthought. But he has failed to adduce any evidence that makes that connection.

119. For that reason we do accept the submissions of Mr Northall that the Claimant's claims in disability discrimination do not even get off the ground. The entire approach of the Claimant and the presentation of his claims is, as Mr Northall suggests, entirely consistent with the fact that the Claimant's real upset stems from the breakdown of his working relationship with those around him.

120. Dealing with each of the Claimant's claims in turn:

Discrimination arising from disability – s.15 EqA 2010

121. The "something" arising from disability on which the Claimant relies is his always feeling exhausted with aching muscles and muscular weakness.

122. The Respondents accept that the something existed as a matter of fact, though they do not accept that the Respondents were aware of the Claimant's exhaustion and muscular weakness. Nr Northall reminds us that the Respondent's knowledge of the Claimant's health was informed by the Claimant's own statements and the medical evidence.

123. The Respondents, however, do dispute that any treatment alleged by the Claimant to constitute unfavourable treatment was because the Claimant was always feeling exhausted, or with muscular weakness.

124. We have made findings of fact in respect of each of the alleged unfavourable treatment in the List of Issues at 5.1 to 5.12 inclusive. We will not repeat those findings of fact here. However, it is the Tribunal's judgment, having heard the evidence and in light of those findings of fact, that none of them demonstrate on the balance of probability that the Claimant was treated unfavourably. Moreover, we are satisfied that there is no evidence to support the assertion that if that treatment had been unfavourable, it was because of something arising in consequence of the disability, namely the Claimant always feeling exhausted with aching muscles and muscular weakness.

125. It is therefore clear to the Tribunal that this claim cannot succeed and must be dismissed. It is dismissed.

Reasonable Adjustments claim

126. At paragraph 8 of the List of Issues, the PCPs the Claimant relies upon are as follows:

    a. a requirement of the Claimant to do tasks that were physically demanding;

    b. a requirement to work without regular breaks; and

    c. employees not being allowed to part their vehicles in the yard.

127. Dealing with the first of these PCPs, we accept Mr Northall's submissions that this is imprecise. The nature of the Claimant's work must of itself incorporate some tasks that were of a physically demanding nature. There is no proper specification as to which tasks the Claimant relies upon and he has not enlightened us during these proceedings. What we can say, however, is that we accepted the Respondent's evidence that they had done everything they could to lighten the burden on the Claimant in the way in which we have indicated in our findings of fact. We therefore cannot conclude what, if any, substantial disadvantage resulted from this PCP.

128. Dealing with the second PCP, where it is alleged there was a requirement to work without regular breaks, the Claimant has made a finding that this is simply not the case. We accept the Respondent's evidence, particularly the evidence of Mr Forrest that in fact everything was done to accommodate the Claimant in the reduction of the amount of work he was expected to do from April 2020. We do accept that there was no rigid 10 minute break practice and we do not think that this would have suited the Claimant in any event. He was a very individual worker and he was given entirely free rein to

manage his own workload and have breaks when he required them. We therefore simply as a matter of fact, do not find that there was such a PCP.

129. Dealing with the third PCP, Paul Churchyard as we have found, did misunderstand that Tom Forrest had given the Claimant special dispensation to park his car outside the Spray Shed. Paul Churchyard forbade all employees to park there and asked that they park in the staff car park a short distance away.

130. This did temporarily affect the Claimant, but as soon as the Grievance was dealt with by the Respondents, the arrangement for the Claimant to park outside the Spray Shed was reinstated. This was five months before the Claimant chose to resign.

131. In any event, we cannot conclude that even during that five month period the Claimant was placed at a substantial disadvantage in comparison with the other employees who were not disabled, as we have simply not have sufficient evidence put before us that this was the case. The evidence before us was in fact that the Claimant chose to walk even further to work than would have been the case had he parked in the staff car park during that five month period. He chose to park at his accommodation and walk a far greater distance.

132. For the reasons as set out above, the Claimant's claim for reasonable adjustments fails and is dismissed.

Harassment

133. In this respect the Claimant must prove on the facts that the treatment he is alleging occurred and that it had the relevant prescribed effect under s.26(4) EqA 2010 and that it was related to his disability, or in one instance, age.

134. The Tribunal has dealt with the alleged unwanted conduct in its findings of fact and in its findings of fact it deals with each allegation set out in the List of Issues from 13.1 to 13.12 inclusive. We refer to those findings. We have not found in a single one of those that we accept that the conduct happened in the way in which the Claimant alleges. None of the acts relied upon constituted in the Tribunal's judgement, unwanted conduct on the basis of our findings of fact and on the balance of probabilities.

135. Of necessity, therefore, the Claimant's claims in harassment must fail.

136. For the avoidance of doubt, however, none of the findings of fact we have made in respect of the incidents relied upon relate to the Claimant's disability, or in respect of the only harassment claim relied upon because of age at 13.8 in the List of Issues, because of his age.

137. The Claimant's claims in harassment therefore fail and are dismissed.

Victimisation

138. In this respect the protected acts relied upon by the Claimant are the Grievances raised on:

138.1 21 June 2020;
138.2 14 and 30 July 2020;
138.3 19 October 2020; and
138.4 24 February 2021.

139. The Claimant then relies on 15 alleged acts of victimisation set out in the List of Issues from 19.1 to 19.15 inclusive.

140. Mr Northall submits to us that the Grievance of 21 June 2020 did not amount to a protected act within the meaning of s.27(2) EqA 2010. It did not allege discrimination of any kind. Nor did it raise any issue in connection with the Act.

141. Similarly, the Grievances on 14 and 30 July 2020 are not protected acts within the meaning of s.27(2) EqA 2010. Neither alleged discrimination of any kind, nor did they do anything else in connection with the Act.

142. In respect of these three Grievances, we agree with Mr Northall that these are merely complaints about the way in which others around him worked differently from the Claimant. These are minor issues and cannot constitute protected acts relating to the Act in the manner intended or prescribed by s.27.

143. The Grievance of 19 October 2020 is once again further complaint, mainly about the Claimant's Return to Work meeting with Beth Mleczek and Tom Forrest. It raised the issue concerning the Claimant's assertion that he had been forced to take holiday and complains that he was not allowed to return to work when he wished to. We have dealt with these issues in our findings of fact and do not accept on the balance of probability, the Claimant's version of events.

144. However, at the final paragraph of that Grievance, he does somewhat obliquely, refer to possible claims for constructive unfair dismissal and disability discrimination. Mr Northall asks us to accept that the link to the Equality Act 2010 is so tenuous that it is insufficient to amount to a protected act. He refers us to the helpful case of Beneviste v Kingston University UKEAT/0393/05, Fuller v Medical Research Council & Anr. UKEAT/0586/12 and Chalmers v Air Point Limited & Ors. UKEATs/0031/19.

145. Having considered this, we do not accept Mr Northall's submissions and do consider that on its face the Grievance of 19 October 2020 constitutes a protected act.

146. Turning to the final Grievance which appears to be a letter of 24 February 2021. This concerns the cancellation of the NROSO subscription and we do not find that this constitutes a protected act in accordance with s.27 EqA 2010, for the same reasons we have set out above.

147. Therefore, we agree with Mr Northall that the only Grievance that could constitute a protected act and in our judgement does, is that of 19 October 2020. Thus, only those detriments relied upon in the List of Issues that post date 19 October 2020 are relevant. We have made findings of fact in respect of those. These relevant detriments are at 19.3, 19.4, 19.6, 19.7 and 19.13.

148. In our findings of fact we have not accepted the Claimant's evidence in respect of each of these detriments. For the avoidance of doubt, we conclude the following:

148.1 The alleged act of victimisation at 19.3 is not supported by any evidence connecting the proposal of a Garden Leave Agreement with the Claimant to the Grievance of 19 October 2020.

148.2 Point 19.4, it is very clear from the evidence that this assertion by the Claimant is just wrong. The Respondents as a matter of fact did not advertise the Claimant's position whilst he was suspended. Firstly, evidence before us clearly shows that the advertisement relied upon by the Claimant is not for his job and is for another job with another company. Furthermore, for the avoidance of doubt, he was never suspended.

148.3 Point 19.6, once again, we do not accept that this happened.

148.4 Point 19.7, this did happen, but we accept the Respondent's explanation that this was just an oversight and a misunderstanding. As Mr Northall points out, Neil Sturgeon was not challenged on his evidence on this point. There is therefore no evidence of a connection with the October Grievance.

148.5 Point 19.13, we do not accept the Claimant's version of events here. No employee had an Appraisal in 2020 due to the Coronavirus pandemic. The fact that the Claimant did not have one, along with everybody else, was not connected to the October Grievance.

149. For the reasons set out above, the Claimant's claims for victimisation fail and are dismissed.

Constructive unfair dismissal

150. We have made findings of fact that we do not accept that the Claimant resigned in reliance upon perceived breaches of contract.

151. We made findings of fact in respect of the reason for the Claimant's resignation and we consider that it was because he had for some time been planning to retire to Wales. He therefore did not resign in respect of the breaches he alleges in the List of Issues at paragraphs 20.1 to 20.14 inclusive.

152. Nevertheless and for the avoidance of doubt, we point out that we have made findings of fact on each of every one of those alleged acts which the Claimant argues either independently or cumulatively, amounted to repudiatory breach of his contract of employment. We do not accept the Claimant's evidence in respect of those acts and do not find, in any one of them, that facts as found on the evidence could have constituted either individually or cumulatively a sufficient breach upon which the Claimant could rely.

153. Accordingly, therefore, the Claimant's claim for constructive unfair dismissal must fail. It is dismissed.

Breach of the Working Time Regulations 1998 – s.45A/101A ERA

154. According to the List of Issues, the claim is based upon whether the Respondent breached Regulation 15 of the Working Time Regulations 1998 by not giving sufficient notice for the Claimant to take annual leave in October 2020, and whether the Claimant refused to comply with a requirement imposed on him by the Respondent in contravention of the Working Time Regulations 1998. Whether as a result the Claimant was subjected to a detriment pursuant to s.45A ERA 1996. The Claimant asserts that the detriment was that he wanted to return to work and there was no reason for him not returning.

155. On our findings of fact, the Claimant's claim is not made out. The Claimant was not compelled to take annual leave. After a discussion, the Claimant agreed to take annual leave. We heard evidence from both Tom Forrest and Beth Mlcezek which the Claimant accepts.

156. For these reasons this claim cannot succeed. It is dismissed.

Health and Safety detriment – s.44(1)(c) ERA 1996

157. The Claimant did not refer to this aspect of his claim at all during these proceedings. Nevertheless, the List of Issues at paragraph 26, sets out the

Claimant's claim on the basis of, did the Respondent act or deliberately fail to act by all the matters that the Claimant has previously set out which occurred after the raising of his Grievances on 14 and 31 July 2020. If so, was the action or inaction done on the ground that the Claimant was an employee at a place where there was no elected Health and Safety Representative or Safety Committee and the Claimant had brought to the Respondent's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety.

158. In this respect the Claimant states that he raised issues of unsafe working practices and misuse of pesticides in a Grievance on 14 and 31 July 2020 and verbally on 22 July 2020, to Matthew Abery and Beth Mlcezek.

159. As a result, was the Claimant subjected to a detriment?

160. The Tribunal cannot find that there is any merit in this claim at all. The Grievance of 14 and 30 July 2020 did not raise Health and Safety concerns and does not satisfy the conditions of s.44(1)(c) ERA 1996. There is no evidence that the Claimant raised any such concerns.

161. In our findings of fact, we conclude that the rearranging of the Spray Shed was in no way dangerous.

162. Therefore, none of the conditions required of paragraph 44 are satisfied and the Claimant's claim in this respect must fail. It is dismissed.

Protected Disclosure Detriment (whistle blowing) – s.47B ERA 1996

163. In respect of this claim, the Claimant relies on the same matters as raised in his claim under s.44. Having regard to our findings of fact, we do not conclude that anything in the Grievances of 14 and 31 July 2020 constitute protected acts. We conclude this on the basis that we have had insufficient evidence before us. Nothing in the Grievances referred to at pages 654 and 658, in our judgement, constitute anything which could be a protected act applying the tests under s.47B.

164. In our judgement, even if it did, the detriments the Claimant seeks to rely upon at 32.1 and 32.2 in the List of Issues are on our findings of fact not proven. The Claimant's claim in this respect must fail. It is dismissed.

165. There appears in the List of Issues to be claims for 'other payment', or unlawful deduction of wages under s.23 ERA 1996.

166. The Claimant did not address us on this and we have no evidence before us to support such a claim. Such claims are therefore, on the balance of probabilities, not proven. They are dismissed.

167. For the reasons set out above, the Claimant's claims in their entirety are dismissed.

14 July 2023

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Employment Judge K J Palmer

Sent to the parties on: 17 July 2023

For the Tribunal Office: GDJ