



EMPLOYMENT TRIBUNALS

Claimant: Mr Vince Haigh

Respondent: DK Tools Ltd

Heard at: Watford Employment Tribunal (by CVP)

On: 19, 20, 21 and 22 February 2024 (4 days)

Before: Employment Judge Hutchings
Tribunal Member M. Harris
Tribunal Member C. Surrey

Representation

Claimant: in person

Respondent: Mr Turpin, legal representative

RESERVED JUDGMENT

1. The complaint of unfair dismissal is not well-founded. The claimant was not constructively unfairly dismissed.
2. At the relevant times the claimant was a disabled person as defined by section 6 Equality Act 2010 because of essential hypertension.
3. The complaint of harassment related to the claimant's disability is not well-founded and is dismissed.
4. The complaint of unfavourable treatment because of something arising in consequence of disability is not well-founded and is dismissed.
5. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant, Mr Haigh, was employed by the respondent, D K Tools Ltd, from 8 May 2017 until he gave notice by email dated 9 March 2022. By claim form dated 6 May 2022 Mr Haigh claims he was constructively dismissed due to the company's breach of the term of trust and confidence implied in his employment contract, the specifics of which we set out in the list of issues below. Mr Haigh also claims the company discriminated against him on the basis of his disability of essential hypertension. Early conciliation started on April 2022 and ACAS issued a certificate was issued on 8 April 2022.
2. The respondent, D K Tools Ltd ("the company") is a commercial and DIY power tools supplier. The company contested the claim by an ET3 response form, Grounds of Resistance, dated 24 June 2022, and an undated amended Grounds of Resistance. The company contends that (acting by its managers) it did not behave in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence it had with Mr Haigh. Therefore, it does not accept that it has breached the term of trust and confidence in Mr Haigh's employment contract. It contends that Mr Haigh resigned from the company for the reasons stated in his resignation email. The company does not accept that Mr Haigh is disabled and denies it discriminated against him even if the Tribunal decides his condition of essential hypertension is a disability.

Procedure, documents, and evidence

3. Mr Haigh represented himself and gave sworn evidence. He called sworn evidence from:
 - 3.1. Nicola Hughes;
 - 3.2. Anita Juneja;
 - 3.3. Roy Juneja;
 - 3.4. Susheel Juneja; and
 - 3.5. David Wadsworth.
4. D K Tools Ltd was represented by Mr Turpin of Peninsula, who called sworn evidence on behalf of the respondent from:
 - 4.1. Ishan Kalra, company director;
 - 4.2. Nihara Inoon, finance / HR director;
 - 4.3. Richard Fernihough, sales director; and
 - 4.4. Steve Pooley, technical advisor / product director.
5. Reading Mr Haigh's witnesses' statements before the hearing we concluded that the statements were opinions of character; none of the statements referred to events in issue. Therefore, the Tribunal did not have any questions for these witnesses; neither did Mr Turpin.
6. We considered the documents from an agreed 455-page hearing file which the parties introduced in evidence, and the late evidence recorded in this judgment.

The hearing was listed for 4 days, during which we heard evidence on liability only. Mr Turpin and Mr Haigh made closing statements.

7. A case management hearing on 12 February 2023 recorded the issues in dispute. At that hearing, Mr Haigh confirmed he was not seeking to pursue a protected disclosure (whistleblowing) claim or discrete health and safety claim of any kind, notwithstanding the suggestion otherwise in the company's Grounds of Resistance. Mr Haigh is claiming:
 - 7.1. Constructive ordinary unfair dismissal (s95(1)(c) Employment Rights Act 1996 ("ERA"));
 - 7.2. Discrimination arising from disability (s15 Equality Act 2010 ("EqA"))
 - 7.3. Failure to make reasonable adjustments (ss20-22 EqA); and
 - 7.4. Harassment related to disability (s26 EqA).
8. We discussed these issues with the parties at the start of the hearing.

Preliminary matters

9. Mr Haigh told us that his condition of essential hypertension meant that he required regular breaks (we agreed a 15-minute break every 45 minutes and additional breaks as indicated by Mr Haigh). At the start of the first day Mr Haigh also told us he had asked a friend to sit with him throughout the hearing as he could "keel over" at any time and he needed to ensure someone was around in case he required an ambulance. However, his "medical support" (Roy Juneja) was ill and could not attend on 19 February. Given the seriousness of Mr Haigh condition at this time (his suggesting he may need an ambulance if he became unwell) we decided not to proceed with any part of the hearing on day 1; the Tribunal took the day as a reading day. Therefore, the hearing started on day 2 (20 February). Mr Juneja attended and supported Mr Haigh for the remainder of the hearing.
10. Mr Haigh told us the hearing file did not include a transcript of his grievance meeting with Ms Inoon on 10 August 2021, despite his having asked for it to be included. Mr Turpin told us that the transcript was based on a covert recording, which Ms Inoon did not know about. We received a copy of the transcript; it was 92 pages long and had been transcribed by an automated system. Large extracts of it, including one where Ms Inoon and Mr Haigh discuss his health and safety qualifications, do not make sense due to errors in the automated transcribing. Therefore, we concluded it was not an accurate record of the meeting. For this reason and the fact Ms Inoon was not told by Mr Haigh he was recording their meeting, we did not admit the transcript or recording as evidence.
11. We note that it was agreed at the February 2023 case management hearing "without prejudice" correspondence (that relating to settlement discussions) from the period of the dispute will be included in the hearing file. Mr Haigh asked to include the ACAS exchange of emails which he says was bullying. While this correspondence is in the hearing file, we explained the correspondence relates to his Tribunal proceedings and not the period of his employment; therefore, it cannot be part of his claim.
12. Mr Haigh told us his GP records and a medical letter about TIA ("transient ischemic attack"), sent to Peninsular as part of the exchange of documents,

were missing from the hearing file. These documents were located and accepted as evidence by the Tribunal.

13. At the end of day 2 (20 February) we asked Mr Turpin to confirm the company had disclosed all relevant documents within its custody, as Mr Haigh referred to emails and teams' messages, he says he sent to company directors requesting more staff. At the start of day 3 the respondent provided a file of additional documents. Relevant documents (referred to in the findings of fact below) were discussed with the parties and accepted as evidence by the Tribunal.

Findings of fact

14. The relevant facts are as follows. First, I make a general finding on evidence and the credibility of witnesses.
15. It was clear to us that Mr Haigh was very upset by the events leading to the end of his employment, and several times he became emotional recalling them. At times his evidence was contradictory, and he could not recall details or chronology of some of his allegations. For example, the impact of hypertension on his ability to carry out day to day activities and when he requested additional staff. In making this observation, we have borne in mind the period of time which has passed (around 2-3 years) since many of the events occurred and how upset he became; some discrepancies may be attributable to this. We found Mr Haigh open in giving evidence; however, often he did not answer the question asked and had to be guided to focus on facts relating to the claim. The fact that often he was unable to recall specific details from memory, or by reference to documents, and confused events does, to some extent, undermine his recollections of the events about which he complains. On occasion, when answering questions in cross examination, he was unable to substantiate his allegations. Where the company's witnesses provided clear evidence, we prefer their recollection. For example, Mr Haigh claims he made repeated requests for extra staff, but was unable to identify when these requests were made.
16. We found the respondent's witnesses more thoughtful, measured and direct when answering the questions put to them.
17. We turn now to our findings of fact relevant to the issues in dispute. Mr Haigh was employed as warehouse manager, reporting to Ishan Kalra, from 8 May 2017, subsequently taking on the additional role of health and safety manager in March 2021. He resigned by email dated 9 March 2022, with 4 weeks' notice, his employment ending on 8 April 2022. Ms Inoon confirmed that Mr Haigh received his notice pay, something he does not dispute.

Role and shift pattern

18. The focus of Mr Haigh's role was to manage the warehouse and oversee health and safety. At the start of his employment, he was told by Mr Kalra to shadow the warehouse workers to understand the role of the colleagues he was employed to manage. By his own admission Mr Haigh went beyond the role of manager, physically supporting his staff in the warehouse, even when he considered staffing levels adequate, telling us that:

“Pre covid I went on containers to lead from front and show how it was done ...I was ands on when needed and help with loading but I didn't really enjoy as had other work to do.”

19. Mr Haigh told us that it was not his job to unload containers nor did his managers tell him to do so, or even allude that he should do so; it was something he chose to do. This accords with Mr Kalra's evidence that Mr Haigh liked to lead from the front.
20. Around May 2020 Mr Haigh was told his shift pattern would change to 3 x 12.5-hour shifts, including 1 hour break Monday, Tuesday and Wednesday. Clause 9.1 of his employment contract records Mr Haigh's contractual hours as 8.30am to 5pm. The company suggests the change to 12 hours shifts fell within clause 9.2, requiring Mr Haigh to sometimes work outside these hours. This is misguided: clause 9.2 also records payment for any additional hours; it is not recording the basis on which the parties can amend the contract. We find that Mr Haigh was not happy about the revised shift patterns but did work them for a period of time.

Medical condition

21. In July 2019 Mr Haigh's GP confirmed (and recorded in his medical notes) a diagnosis of essential hypertension (“HT”), He subsequently told the company about his diagnosis, Mr Kalra confirming that he was aware of the diagnosis from 26 September 2019. HT is a long-term condition: Mr Haigh's GP notes record his condition on-going to 8 March 2023 (the last date we have seen). Mr Haigh continues to have the condition today.
22. While the GP records record that HT does not normally affect day to day activities, this is a general statement. We must consider the subjective impact on Mr Haigh. He provided a statement to the Tribunal as part of these proceedings detailing the impact his HT had on his ability to carry out day to day activities, explaining how he finds every day a challenge, his vision is blurred, and he experiences light-headedness and nausea.
23. The statement does not explain what Mr Haigh could not do from March 2020 onwards as a result of his HT, nor does it align with what he told his employer at the time about the impact his diagnosis has on his life, nor are the conditions he describes in his impact statement recorded in his GP notes for the period to which Mr Haigh's complaints with his employer relate. In this regard his impact statement does not reflect evidence about Mr Haigh's condition from March 2020. However, in the record of a meeting Mr Haigh had with Peninsula face to face team (as part of the internal grievance procedure) it is noted that if work related issues can be resolved Mr Haigh's blood pressure will return to the normal range. When this is the case, the HT should not cause Mr Haigh any issues with day-to-day activities. The note also confirms that the GP states Mr Haigh is taking the correct medication to manage his condition; we note, by his own admission Mr Haigh did not take the medication consistently. At this meeting Mr Haigh does mention concerns about blurred vision, wobbly brain fog and emotional difficulties, saying the GP attributed this to stress (as recorded on the sick notes). Mr Haigh explains his blood pressure was very high “seven or with months ago” which accords with some of the period about which he complains.

24. Taking the totality of the evidence about Mr Haigh's condition, we find that while Mr Haigh did not raise direct concerns about the impact of his HT condition with the company in March 2020, he did so when discussing that period at the grievance meeting. His GP records for February to March 2020 confirm the condition, which was compounded by events at work causing stress; we find the 2 conditions (HT and stress) cannot be isolated, stress impacting Mr Haigh's blood pressure and HT, ultimately resulting in his periods of sick leave.
25. Following his sick leave in September 2019, Mr Haigh took it upon himself to complete a return-to-work form from his own store (as a line manager) and left the completed form on Mr Kalra desk. While Mr Kalra did not arrange a formal return to work interview, we find that the contents of the form were discussed in a one-to-one meeting with Mr Kalra, at which Mr Kalra asked Mr Haigh whether there were any changes he needed to facilitate his return to work. We find that Mr Haigh told Mr Kalra "he was taking himself off containers". Mr Kalra accepted this was something Mr Haigh wanted to do. We find this was the only adjustment made on his return; neither Mr Haigh nor Mr Kalra suggested other adjustments to facilitate Mr Haigh's return.

Staffing levels

26. In 2017 Mr Haigh had 10 staff on his team. Mr Haigh told us he raised concerns with staffing levels with his managers during Covid, specifically asking for an additional 3 staff in emails and team's messages with Mr Kalra and telling us these requests were refused. Mr Haigh cannot recall when the requests were made or refused. There is no documentary record in the evidence of these requests or refusals. Mr Haigh says this is because he was blocked from accessing his emails. We made additional enquires about the company's disclosure of documents. We are satisfied all relevant documents were disclosed before and during the hearing.
27. Given the lack of specificity in when the requests / refusals were communicated and the fact that staffing levels did increase by 4 during this period, we prefer Mr Kalra's recollection that to the extent there were staffing issues these were addressed. Indeed, we find Mr Kalra's explanation that the additional 4 staff were added to the warehouse team due to increased demand for DIY tools during the period of Covid lockdown credible.

Health and safety concerns

28. In April 2021 the company identified an issue with a product that was unsaleable. On 23 April 2021 Mr Hawkes sent an email to Mr Kalra and Mr Haigh highlighting the issue and making suggestions about what could be done to get this stock into a saleable state. Mr Pooley was copied into this email. On 24 May 2021 (08:18) he emails Mr Hawkes, copying Mr Kalra and Mr Fernihough making a suggestion for how this can be addressed. His email states:

"In an effort to make some of the stock available I have come up with a plan. I will [Tribunal emphasis] test the voltage....."

29. Mr Hawkes replies within the hour, copying Mr Haigh into the email trail. Mr Haigh is on holiday on 24 May 2021. He replies while on holiday stating he had

placed a ban on electrical testing by Mr Pooley and that this ban “*was all electrical testing*”. This statement in Mr Haigh’s email of 24 May (copied to several members of the team) is factually incorrect. In fact, his ban on Mr Pooley, in an email to him dated 4 May 2021, referred to testing at home only:

“Just to confirm our conversation of earlier, please do not, conduct any testing or stripping of any electrical products at home until further notice.”

30. Mr Haigh also states that Mr Pooley has not adhered to his ban. He alleges in these proceedings that Mr Pooley committed a health and safety breach, and this is one of the reasons he resigned.

31. Mr Kalra considered the tone of Mr Haigh’s 24 May email “*irate*”, telling him so in a private email to Mr Haigh on 24 May (19:09). In this email Mr Kalra reminds Mr Haigh that his ban on Mr Pooley testing electrical items was “at home” and confirms that “*Steve has not started any testing, but instead asked Paul if the method proposed met with his approval from a technical perspective.*” The email records an accurate record of events at the time.

32. Mr Haigh’s interpretation of the situation, at the time, is misguided for a number of reasons:

32.1. His email bans Mr Pooley from conducting any electrical testing at home. The first reference to a full ban is 24 May 2021, after the alleged breach by Mr Pooley.

32.2. Mr Pooley did not conduct any testing. The email of 24 May which triggers Mr Haigh’s concerns is only a suggestion by Mr Pooley of what he could do. Mr Haigh has misinterpreted the use of the language “I will”. It is not definitive that testing took place. Indeed, Mr Haigh conceded to the Tribunal that the wording is future tense and does not refer to a past action. Reading the entire email in the context of the chain of email conversation, it is quite clear that Mr Pooley is making a suggestion. Mr Haigh relies on a suggestion by a third party (not called as a witness by Mr Haigh) that he may have seen testing on a Saturday morning. We prefer Mr Pooley’s direct evidence to the Tribunal that he did not go on site on any Saturday in May 2021, and he did not test the product at all. Indeed, had he tested it on site (which he did not) there would have been no breach on the ban placed on him by Mr Haigh; the ban was limited to “home”.

32.3. There is no “near miss”, as suggested by Mr Haigh. It follows that if something did not happen as a matter of fact (Mr Pooley did not undertake any testing in contravention of a ban at home or any testing at all of these products in the workplace prior to 24 May 2021) then there cannot be a near miss. The testing did not happen. All that happened was Mr Pooley made a proposal to assist Mr Hawkes and the company is its aim to repurpose the tools. We find that Mr Haigh has extrapolated in his mind a version of events (electrical testing by Mr Pooley) that simply did not occur, as confirmed to Mr Haigh by Mr Pooley, Mr Kalra and Mr Fernihough. This was also the finding of the grievance investigation, and it is our finding; no testing took place by Mr Pooley as alleged by Mr Haigh.

33. Mr Kalra’s email of 24 May (6:19:30 PM) raises concerns about the tone of Mr Haigh’s email to Mr Pooley. Mr Haigh alleges that Mr Kalra’s email was an

admonishment which caused him to resign. Mr Haigh could not identify which part of the email he considered an admonishment, telling us the whole email had caused him to resign. We find Mr Kalra's email a factual and an accurate reflection of the conversations about the repurposing of the product. Mr Kalra does raise concerns with Mr Haigh about the contents of Mr Haigh's email to Mr Pooley. In doing so he is professional, referencing a previous incident and politely asking Mr Haigh to ensure his communications "treat everyone with respect and equality". We have read the email Mr Haigh sent to Mr Pooley; we find that Mr Kalra is fair and measured in addressing his concerns with the tone of Mr Haigh's email.

34. Mr Haigh raises a second health and safety concern, saying that the company arranged to transport goods in a private vehicle. He alleges this took place when he was on holiday in May 2021. Again, Mr Haigh is misguided in his version of events. There is no evidence before the Tribunal that the company transported goods in a private vehicle. A company employee asked if she could transport goods using her car. She was told she could not and did not do so. An enquiry was made by someone unaware of the health and safety rules; nothing more. no arrangement to transfer goods was made. Again, Mr Haigh is misguided. The facts do not constitute a "near miss" (an event which takes place which could result in injury). A sensible enquiry was made. That is all. This allegation was investigated as part of Mr Haigh's grievance. The findings of the investigation accord with our conclusion there was no breach or near miss.

35. Mr Haigh was signed off by his GP due to stress from 14 to 20 June 2021.

Meeting on 7 July 2021

36. On 7 July 2021 Mr Haigh attended a meeting with Peninsula face to face team (Magda) at which he says he was made an offer to leave the company. The company says it did not authorise any offer, Ms Inoon telling us that Mr Haigh had told her that he did not know when he would be able to return to work so she took advice and was told options would be explored with Mr Haigh at the meeting. Ms Inoon did not attend this meeting but told us she was clear in telling Magda not to make an offer and did not give Magda any amounts to offer.

37. Mr Haigh says he was supported at the meeting by Mr Juneja and also recorded the meeting; however, Mr Juneja makes no mention of this meeting in his witness statement. Mr Haigh makes no mention of Mr Juneja's attendance at the meeting or the recording in his witness statement, nor has he provided a transcript of the meeting to the Tribunal. Mr Haigh also suggests in his statement that he makes a counter-offer; there is no other information about his alleged counter-offer (amount, terms).

38. Ms Inoon told us she spoke with Magda immediately after the meeting and was told by Magda that she could not get to an offer due to the nature of the discussion and all that she was able to do was mention the statutory amount, at which point Mr Haigh became cross and the meeting ended.

39. We find that the company did not authorise Magda to make an offer. A discussion took place. We prefer Ms Inoon's evidence that the discussion ended without an offer. In making this finding we are mindful that the position may not have been clear to Mr Haigh. Several times we have had to focus Mr

Haigh on the questions being asked during this hearing; he is distracted by the emotional elements of the events, and we consider this was a factor in his concluding that he was being made an offer. He has not provided any details of the offer (amount, terms) or his counter-offer. This is because the meeting did not result in an offer to terminate his employment.

40. After this meeting Mr Haigh did not return to work. He took holiday until 26 July 2021, after which he was paid 10 days sick leave.

Erroneous facts in the grievance procedure (September 2021)

41. Mr Haigh raised a grievance against Mr Kalra on 19 September 2021; he alleges the outcome of this grievance was based on erroneous facts. Mr Haigh could not identify to the Tribunal the facts he says the company relied on in reaching its conclusions in the grievance procedure which he says are erroneous. The facts we have considered which formed the basis of conclusions in this procedure (Mr Pooley did not conduct electrical testing, there was no arrangement to transport goods, that there was no near miss) are factually correct in the grievance documents. We find there were no erroneous facts relied on to reach the conclusions in the grievance procedure.

Grievance appeal (December 2021)

42. We find the grievance appeal was not upheld as the grievance conclusions were based on correct facts and Mr Haigh did not bring any new facts or evidence as part of the appeal process. Therefore, as there was no new information, it follows that the appeal reflects the initial findings and was not upheld.

Occupational health

43. The company refused to refer Mr Haigh to Occupational Health ("OH") until the grievance process was completed. Ms Inoon told us that the company wanted to wait until the conclusion of the grievance process. Mr Haigh was unable to say when he would be able to return to work from sick leave and relying on professional advice, and being in Mr Haigh's best interests they delayed a medical capability assessment until after the grievance and appeal process, as these may identify factors / information which should be passed to OH.

Mediation

44. Mr Haigh complains that in December 2021 he is displaying willingness to engage in mediation, which was not accepted by the company. By his own admission and the evidence of Ms Inoon we find this willingness was limited to mediation with Mr Deepak Kalra (a company employee). He was not willing to engage in mediation with Peninsula, advisors the company had identified as an independent mediator as he did not trust Peninsula.

Resignation

45. On 09 March 2022 Mr Haigh emailed his resignation to Ms Inoon, stating that his role as health and safety manager is untenable and he needs to resign for reasons of breach of duty of care and his health. On 10 March 2022, Ms Inoon emailed Mr Haigh advising him that mediation was still available and

encouraged him to reconsider his decision. On 1 April 2022 she confirmed the company's acceptance of his resignation by email. Me Haigh's employment ended on 6 April 2022.

Issues for the Tribunal to decide

Constructive dismissal

46. We must decide whether the respondent did the following things, which are the allegations made by the claimant in claim form and confirmed at the case management hearing:

46.1. From late 2020 until the claimant commenced sickness absence on 1 June 2021, despite holding the position of Warehouse Manager, being made to work three 12.5 hour shifts a week on the shop floor due to alleged understaffing rather than undertaking his managerial office role.

46.2. At the end of May 2021 whilst the claimant was absent from work the respondent allowed breaches of health and safety that the claimant considered to be inappropriate as Health and Safety Manager, namely arranging to transport company goods in a private vehicle did not happen, no near miss, no breach and allowing a colleague to check electrical goods who the claimant had previously banned from so doing; did not happen.

46.3. On or around 24 May 2021, receiving an email from the claimant's line manager, Mr Ishan Kalra (Operations Director) admonishing the claimant for previously emailing the team that same day to insist that the colleague referred to above did not undertake electrical testing.

46.4. On 7 July 2021, holding a purported "without prejudice" meeting with the claimant in response to him telling the respondent that the respondent had caused his high blood pressure and offering him a payoff to leave employment.

46.5. The respondent refused to refer the claimant to Occupational Health until the grievance process was concluded; did happen.

46.6. The respondent's grievance outcome received towards the end of August 2021 was based on erroneous facts.

46.7. The respondent not upholding the claimant's grievance appeal which the claimant was notified of on 17 December 2021.

46.8. The respondent on or around 17 December 2021 alleged that the claimant was not willing to engage in workplace mediation when the claimant says he had indicated a willingness. In so far as it is necessary, the claimant relies upon this as the 'final straw'. If the respondent was in breach, did the claimant affirm the contract of employment before resigning?

47. To determine whether Mr Haigh was unfairly dismissed first we must consider whether D K Tools Ltd breached the implied term of trust and confidence? The burden of proof is with Mr Haigh to prove that, on the balance of probabilities, D K Tools Ltd did breach this term. We must decide whether:

- 47.1. The Respondent company (acting by its managers) behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence with Mr Haigh; and (if we find that it did)
- 47.2. It had reasonable and proper cause for doing so.
48. If we find trust and confidence has been breached, we must decide whether the Mr Haigh's resignation on 9 March 2022 was in response to that breach.
49. If so, we must determine whether the resignation took place within a reasonable period of time, or did Mr Haigh affirm the contract before resigning? This means we will need to decide whether Mr Haigh's words or actions showed that he chose to keep the contract alive even after any breach.

Disability

50. Did the claimant have a physical impairment of hypertension from September 2019 onwards?
51. If so, did/does the impairment have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?
52. If so, is that effect long term? In particular, when did it start and at the material time:
- 52.1. Has the impairment lasted for at least 12 months?
- 52.2. Is or was the impairment likely to last at least 12 months or the rest of the claimant's life, if less than 12 months?
53. Are any measures being taken to treat or correct the impairment? But for those measures would the impairment be likely to have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?
54. The relevant time for assessing whether the claimant had/has a disability (namely, when the discrimination is alleged to have occurred) is from March 2020 onwards.

Time /limitation

55. If we decide Mr Haigh is disabled, we must decide if he brought his claim within the time limits set by law.
56. The claim form was presented on 6 May 2022. Accordingly, and bearing in mind the effects of ACAS early conciliation (which commenced on 6 March 2022 and a certificate being issued on 8 April 2022), any act or omission which took place before 7 December 2021 is potentially out of time, so that the tribunal may not have jurisdiction.
57. Does the claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

58. Was any complaint presented within such other period as the employment tribunal considers just and equitable?

Equality Act 2010” discrimination claims

Harassment related to disability: section 26

59. Did the respondent engage in unwanted conduct as follows, namely offering the claimant a payoff in return for the termination of his employment at a meeting on 7 July 2021.

60. Was the conduct related to the claimant’s protected characteristic?

61. 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?

62. If not, did the conduct have the effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

63. In considering whether the conduct had 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.

Discrimination arising from disability; section 15

64. The allegation of unfavourable treatment as “something arising in consequence of the claimant’s disability” falling within section 39 Equality Act is the claimant’s (alleged). No comparator is needed.

65. Does the claimant prove that the respondent treated the claimant as set out in the paragraph above?

66. Did the respondent treat the claimant as aforesaid because of the “something arising” in consequence of the disability? The claimant says that the understaffing exacerbated his health condition which resulted in him being unable to return to work and being forced to resign.

67. Does the respondent show that the treatment was a proportionate means of achieving a legitimate aim? If the respondent relies on an objective justification defence, the respondent must set out in its amended response the business aim or need sought to be achieved, the reasonable necessity for the treatment and how this was said to be proportionate.

68. Alternatively, has the respondent shown that it did not know, and could not reasonably have been expected to know, that the claimant had a disability?

Reasonable adjustments: section 20 and section 21

69. Did the respondent apply the following provision, criteria and/or practice (‘the provision’) generally, namely:

- 69.1. Working with limited staffing levels in the warehouse;
- 69.2. Requiring the claimant to work three 12.5 hour shifts on the shop floor per week.
70. Did the application of any such provision put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled in that the claimant says this placed a significant strain on him which exacerbated his medical condition.
71. Did the respondent take such steps as were reasonable to avoid the disadvantage? The burden of proof does not lie on the claimant, however it is helpful to know the adjustments asserted as reasonably required and the claimant says a such an adjustment would have been to employ or allocate more staff to the team he managed or move him back to his office role.
72. Did the respondent not know, or could the respondent not be reasonably expected to know that the claimant had a disability or was likely to be placed at the disadvantage set out above?

Law

Constructive dismissal

73. Section 95(1)(c) of the Employment Rights Act 1996 (the 'Act') provides that an employee is dismissed by their employer if:

'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'.

74. In order to establish constructive dismissal, an employee must show that the employer has committed a breach of contract (express or implied) which causes an employee to resign (Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27) and that the breach is sufficiently serious to justify the employee resigning or is the last in the series of incidents which justify their leaving. In this case the claimant relies on an alleged breach of the implied term of trust and confidence as the employer's conduct.

75. A breach of this term occurs where an employer conducts itself without reasonable and proper cause in a manner calculated, or likely to destroy or seriously damage, the relationship of confidence and trust between employer and employee (Courtaulds Northern Textiles Ltd v Andrew [1979] IRLR 84, Mahmud v BCCI [1997] IRLR 462, Yapp v Foreign and Commonwealth Office [2015] IRLR 112). A Tribunal must consider:

75.1. Was the conduct likely to destroy or seriously damage the relationship of confidence and trust between employer and employee?

75.2. If so, was there reasonable and proper cause for the conduct?

76. A breach of this implied term is likely to be repudiatory. The Court of Appeal considered the characteristics of a repudiatory breach of contract in the case of Tullett Prebon plc & ors v BGC Brokers LP & ors [2011] IRLR 420. Maurice

Kay LJ, who delivered the leading judgment, held as follows at paragraphs 19 and 20:

“The question whether or not there has been a repudiatory breach of the duty of trust and confidence is “a question of fact for the tribunal”: Woods v WM Car Services (Peterborough) Limited, [1982] ICR 693, at page 698F, per Lord Denning MR, who added:

‘The circumstances ... are so infinitely various that there can be, and is, no rule of law saying what circumstances justify and what do not’ (ibid).

77. The question whether a repudiatory breach of contract has occurred must be judged objectively (*Buckland v Bournemouth University Higher Education Corporation* [2010] ICR 908); this requires the Tribunal to assess whether a breach of contract has occurred on the evidence before it. Neither the fact that an employee reasonably believes there to have been a breach nor that the employer believes it acted reasonably in the circumstances is determinative of this: the test is not one of ‘reasonableness’ but simply of whether a breach has occurred. When considering the question of constructive dismissal, the focus is on the employers conduct and not the employee’s reaction to it.
78. Furthermore, a claimant must show that they resigned in response to this breach and not for some other reason (although the breach need only be a reason and not the reason for the resignation) *Kaur v Leeds Teaching Hospitals NHS Trust* [2019] ICR 1; however, the breach must be a substantial part of the reasons for the dismissal *United First Partners v Carreras* [2018] EWCA Civ 323.
79. It is open to an employer to prove that the employee affirmed the contract despite the breach, perhaps by delay or taking some other step to confirm the contract *Cockram v Air Products plc* [2014] ICR 1065, EAT.
80. A claim for in breach of the implied term of trust and confidence may be based on the ‘*last straw doctrine*’ (the name of which is derived from the old saying “*the last straw that broke the camel’s back*”). This doctrine provides that a series of acts by the employer can amount cumulatively to a breach of the implied term of trust and confidence even though each act when looked at individually might not have been serious enough to constitute a repudiatory breach of contract. Inherent in the concept of a last straw is that there was one final act which led to the dismissal (*the last straw*) and the nature of this was considered in *London Borough of Waltham Forest v Omilaju* [2005] IRLR 35 where the Court of Appeal held that the last straw need not be unreasonable or blameworthy conduct, all it must do is contribute, however slightly, to the breach of the implied term of trust and confidence. If the act relied on as the final straw is entirely innocuous however then it is insufficient to activate earlier acts which may have been, or may have contributed, to a repudiatory breach.
81. The breach of contract does not need to be the sole reason for the resignation. It is sufficient for the employee to prove, on the balance of probability, that they resigned in response, at least in part, to a fundamental breach of contract by the employer (*Nottinghamshire County Council v Meikle* [2004] EWCA Civ 859).

82. Of course, where parties are acting reasonably it is less likely that there will have been a breach of contract when judged objectively but this is not necessarily so. If, on an objective approach, there has been no breach by the employer, the employee's claim will fail.
83. This claim identified a grievance procedure as part of the claim for breach of the implied term of trust and confidence. In Abbey National Plc v Fairbrother [2007] UKEAT/0084/0, the EAT held that when considering a grievance procedure in the context of constructive dismissal, the standard against which it should be judged was '*the band of reasonable responses*'.

Time Limits

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

Disability: Equality Act 2010 section 6

85. Section 6 of the Equality Act 2010, provides as follows:

- (1) A person (P) has a disability if-
 - (a) P has a physical or mental impairment, and
 - (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day to day activities.

86. It is well established that the onus of proving a disability is on the Claimant, on the balance of probabilities (Morgan v Staffordshire University [2002] IRLR 190) to show that she falls within the definition of disability.

87. Section 212 of the Equality Act 2010, clarifies that:

- (1) In this Act-
 - ...
 - 'Substantial' means more than minor or trivial.

88. The case of Anwar v Tower Hamlets College [2010] UKEAT0091/10, clarified that an effect more than trivial may still be minor. There are supplementary provisions in relation to disability in Schedule 1 of the 2010 Act. Guidance has been issued by the Secretary of State regarding matters to be taken into account by Employment Tribunals in determining questions relating to the definition of disability. We are required to take into account any aspect of the Guidance which appears to be relevant. Paragraph A2 of the Guidance contains a helpful analysis of Section 6 of the Equality Act 2010. Main elements of the definition of disability-

- A1 ...

A2 This means that, in general:

- the person must have an impairment that is either physical or mental;
- the impairment must have adverse effects which are substantial;
- the substantial adverse effects must be long term; and
- the long term substantial adverse effects must be effects on normal day to day activities.

All of the factors above must be considered when determining whether a person is disabled.

89. Paragraph 2(1) of Part 1 of Schedule 1 to the Equality Act 2010, clarifies:

Long term effects-

- (1) The effect of an impairment is long term if-
 - (a) it has lasted for at least 12 months;
 - (b) it is likely to last for at least 12 months; or
 - (c) it is likely to last for the rest of the life of the person affected.

90. The relevant date is whether or not a claimant is subject to such an effect at the time of the alleged discrimination McDougall v Richmond Adult Community College [2008] IRLR 227.

91. Paragraph 2(2) of Part 1 of Schedule 1 to the Equality Act 2010, says:

- (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day to day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

92. Paragraph 5(1) of Part 1 of Schedule 1 to the Equality Act 2010 addresses where an individual receives treatment for an impairment.

- (1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—
 - (a) measures are being taken to treat or correct it, and
 - (b) but for that, it would be likely to have that effect.
- (2) "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid

Discrimination arising from disability: section 15 Equality Act 2010

93. Section 15 of EqA provides:

(1) A person (A) discriminates against a disabled person (B) if—

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

Reasonable Adjustments: sections 20 & 21 Equality Act 2010

94. Section 20 EqA sets out the duty on an employer to make adjustments; the duty comprises the following three requirements.

.....

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

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

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

Section 21 provides:

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

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

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

Harassment related to disability: Equality Act 2010 section 26

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

(1) A person (A) harasses another (B) if-

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) The conduct has the purpose or effect of-

(i) Violating B's dignity, or

(ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

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

- (a) the perception of B;
 - (b) the other circumstances of the case;
- whether it is reasonable for the conduct to have that effect.

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

- 97.1. Did the claimant genuinely perceive the conduct as having that effect?
- 97.2. In all the circumstances, was that perception reasonable?

Conclusions

Constructive dismissal

98. Mr Haigh’s claim turns on the questions I set out in the list of issues. First, when judged objectively, on the balance of probability, and on the basis that Mr Haigh resigned on 29 January 2023, I must decide whether the respondent company (acting by its managers / employees) behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between Mr Haigh and D K Tools Ltd and (if I find that it did) whether it had reasonable and proper cause for doing so. The events Mr Haigh claims breached the implied term of trust and confidence are summarised in the list of issues. I address each in turn.

99. To determine whether Mr Haigh was unfairly dismissed first I must consider whether D K Tools Ltd breached the implied term of trust and confidence? The burden of proof is with Mr Haigh to prove that, on the balance of probabilities, D K Tools Ltd did breach this term.

100. We set out below the issues we must determine, which we discussed with the parties at the beginning of the hearing, mindful that the claimant is not represented.

101. It is agreed that the claimant resigned from the company on 8 April 2022. We address each of Mr Haigh factual allegations in turn. Mr Haigh alleges that from May 2020 until he went on sickness absence on 1 June 2021 he was required to work three 12.5 hour shifts a week on the shop floor. We have found that he was required to work shifts of 12.5 hours, to include a one-hour lunch break and this work pattern was different to that recorded in his employment contract. It was an amendment to his hours, and not overtime work under clause 9.2 of his contract, to which he did not agree by signing a revised contract. However, there is no evidence that he objected to these hours at the time, nor is there any evidence that these hours had to be on the warehouse floor. We have found that this amendment was due to alternative working arrangements put in place as a result of Covid restrictions, when warehouse staff were split into 2 teams, a discussion which took place between Mr Kalra

and Mr Haigh. We have also found that staffing levels were initially insufficient at this time due to an upturn in demand for the company's products as a result of the Covid lockdown.

102. We have found that around this time Mr Haigh requested additional staff and the company employed an additional 4 additional staff to meet this demand. While we have not found a specific request for 3 staff was made by Mr Haigh, in any event we conclude the matter was resolved by 4 new staff joining Mr Haigh's team during this period.
103. There was no health and safety breach or "near miss" as alleged by Mr Haigh, or at all. There was no electrical testing by Mr Pooley. We have found that Mr Haigh was on holiday in May 2021 at the time of the alleged breaches and is relying on the alleged observations of a colleague others (who he did not call as witness). We have found that Mr Haigh banned Mr Pooley from testing electrical products at home, and not in the workplace as he suggests. We have also found that Mr Pooley made a proposal to solve the company's issue with old stock. He did not test any items at home in contravention of the ban. Nor, we have found, did he test any items in the workplace. He did not breach health and safety. His proposal about testing does not satisfy the criteria for a "near miss". Mr Pooley did nothing wrong.
104. A company employee made an enquiry about transport good in their own car. They were told they could not do so. They did not do so. Mr Haigh has misinterpreted the facts and the health and safety guidelines. There was no health and safety breach. No transport of goods took place. Making an enquiry as to whether goods could be transported is not a "near miss". It is sensible behaviour, when someone is inexperienced or unaware of the rules.
105. We have found Mr Kalra's email to Mr Haigh on 24 May 2021 accurate (as to what Mr Haigh told Mr Pooley about testing, and that Mr Pooley made a suggestion to resolve a situation and did not test) and professional in raising concerns about Mr Haigh's communications. The wording is not harsh or a warning. It is a reminder to be courteous to colleagues.
106. We have found that the company's representative did not make Mr Haigh an offer to terminate his employment at the meeting on 7 July 2021. A discussion took place on the company's instruction in the context of Mr Haigh's capability to continue doing his job as he had told Ms Inoon that he did not know when he would be able to return to work. Discussions centred on any statutory entitlement which may be application to Mr Haigh's circumstances. He became upset during this conversation and the meeting ended. No offer was made.
107. We have found the company decided not to refer Mr Haigh to Occupational Health until the grievance process concluded. The subsequent grievance outcome (August 2021) was not based on erroneous facts; the facts about no electrical testing, no transport of goods, no near miss, which informed the grievance decision, are accurate. As a result, and because Mr Haigh did not produce any new facts in his appeal application, his appeal was not upheld.
108. In December 2021 Mr Haigh offered to engage in mediation with Deepak Kalra. We have found that the company did not consider this appropriate as Mr Kalra was an employee and offered Mr Haigh mediation through Peninsula. By

his own admission, he refused this offer. We have found his willingness to mediate was limited to Mr Kalra.

109. As we have found some of the events complained of (12.5-hour shift, OH refusal and not upholding the appeal) occurred as described by Mr Haigh, to decide whether this resulted in Mr Haigh's resignation, we have to consider whether the company (acting by its managers) behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence with Mr Haigh. Addressing each situation in turn:

109.1. We have found that the 12.5 hour shifts were put in place to address staffing challenges as a result of Covid restrictions. Mr Haigh was involved in discussions with Mr Kalra about splitting his team in to 2 groups. While he was not happy about the changes, Mr Haigh worked these hours and, other than refusing to sign an amended contract, did not raise his concerns at the time. The revised shift patterns were not put in place by the Mr Kalra in a calculated way to damage the relationship with Mr Haigh, but rather to address the challenges thrown up by Covid restrictions and increased demand for DIY tools at this time. It was a business decision; there was no intention to destroy the relationship of trust and confidence between the company and Mr Haigh.

109.2. We have found that Ms Inoon decided that Mr Haigh should not be referred for an OH assessment until the grievance procedure was concluded based on professional advice that the findings of the grievance process may provide relevant and useful information to be taken into account as part of the OH assessment. We conclude this was a legitimate reason for the delay. The decision was not calculated to upset Mr Haigh but rather it was a pragmatic and informed approach in the context of not knowing when Mr Haigh would be able to return to work (as he was unable to tell the company when he could do so) and to ensure the OH assessment had up to date and accurate information from the grievance outcome.

109.3. We have found that the company did not uphold Mr Haigh's grievance appeal. They did so as the conclusions from the appeal were (we have found) based on accurate facts and Mr Haigh did not produce any new information in his appeal. In not upholding the appeal the company was correctly following process; there was no calculated behaviour on the part of the company.

110. As we have concluded that the 3 events that happened as described by Mr Haigh were not breaches of the term of trust and confidence in that the behaviour of the company's managers in these situations was not calculated or likely to destroy or seriously damage the trust and confidence with Mr Haigh. We must conclude that Mr Haigh's resignation was not constructive dismissal. We do not need to consider whether Mr Haigh affirmed the contract between the events described and his resignation as the events did not breach the term of trust and confidence.

Disability: section 6 Equality Act 2010

111. The company accepts that Mr Haigh has a physical impairment of essential hypertension ("HT") from diagnosis in July 2019. We agree. We must decide whether the HT did/does have a substantial adverse effect on

the Mr Haigh's ability to carry out normal day-to-day activities. Mr Haigh's evidence is not consistent. His impact statement explains the impact of HT on his life now; we conclude HT does have a substantial impact (the test of substantial we must apply is outlined above). However, Mr Haigh has not provided detailed evidence of the impact of HT on his ability to carry out day to day activities from July 2019, nor does he raise any concerns with his employer until he is questioned about the impact of HT in the grievance meeting. Then he does mention problems with his blood pressure, eyes and headaches. The GP record does reference high blood pressure around this time.

112. The HT condition has lasted for at least 12 months: the GP records confirm diagnosis in July 2019 and make references to HT to March 2023 (the date of the last GP record we have seen). Mr Haigh continues to have HT today. Therefore, applying this timeline we conclude the impairment has lasted for at least 12 months and likely to last at least 12 months or the rest of the claimant's life, if less than 12 months; it is ongoing. Difficulties at work and associated stress are linked to Mr Haigh's high blood pressure, for which his GP prescribed medication. While Mr Haigh's medicating has been intermittent, without the medication the GP evidence supports our conclusion that his blood pressure would be higher; without medication the impact on his day-to-day activities would be more problematic. Therefore, on balance, mindful of the timeline we conclude that the effect of HT is long term and evident from March 2020 onwards.

113. For these reasons we conclude that Mr Haigh's physical impairment of HT is a disability, satisfying the test we must apply in section 6 of the Equality Act 2010.

Time / limitation

114. The claim form was presented on 6 May 2022. Accordingly, and bearing in mind the effects of ACAS early conciliation (which commenced on 6 March 2022 and a certificate being issued on 8 April 2022), any act or omission which took place before 7 December 2021 is potentially out of time, so that the tribunal may not have jurisdiction.

115. We consider the events described by Mr Haigh conduct extending over a period; events relate to his management of the warehouse and oversight as health and safety manager, all of which Mr Haigh complained about in his grievance, which is in time. Therefore, we conclude it is just and equitable to extend time for Mr Haigh's discrimination claim.

Harassment related to disability: section 26 Equality Act 2010

116. As we have found Mr Haigh was / is disabled, we can consider his complaint of harassment. Mr Haigh's complaint of harassment centres of his allegation that the company offered him a payoff in return for the termination of his employment at a meeting on 7 July 2021. As we have found the respondent made no offer to terminate his employment with a payment at this meeting, the harassment claim cannot succeed.

Discrimination arising from disability: section 15 Equality Act 2010

117. As we have found Mr Haigh was / is disabled, we can consider his complaint of discrimination arising from disability. Mr Haigh alleges that his enforced resignation (constructive dismissal) was unfavourable treatment (something arising in consequence of the claimant's disability). Mr Haigh has not provided that he was forced to resign; we have not upheld his claim of unfair dismissal. As the alleged event did not occur, we must conclude that there is no discrimination.
118. We have also found that the company did not understaff the warehouse as alleged by Mr Haigh. When more staff were needed as a consequence of increased demand for products, the company employed 4 new staff members. The need for new staff was not linked to Mr Haigh's disability. We have found that staffing levels did not result in Mr Haigh leaving the company. For these reasons there was no discrimination of Mr Haigh arising from his disability of HT.

Reasonable adjustments: section 20 and section 21 Equality Act 2010

119. Mr Haigh alleges that the company had a practice of working with limited staffing levels in the warehouse. We have found that for a limited period staffing levels were below necessary levels due to a sharp increase in demand for DIY tools during the Covid lockdown. This did result in Mr Haigh being asked to work three 12.5 hour shifts each week. However, there is no evidence that this decision placed a significant strain on Mr Haigh's health, exacerbating his medical condition. Therefore, we must conclude Mr Haigh was not put at a substantial disadvantage in comparison with persons who are not disabled with HT by the revised shift pattern.
120. Mr Haigh told us that the adjustment he sought was to employ or allocate more staff to the team he managed. The company did so; given the increase in demand, the company employed 4 additional staff in the warehouse. As a manager, Mr Haigh also had discretion to employ agency staff when needed, a discretion he accepts he had. He also told us that another adjustment would have been to move him back to an office role; his role was managerial; by his own admission he went beyond his duties, actively engaging with manual work in the warehouse.
121. We conclude that the company did not fail to make reasonable adjustments for Mr Haigh as he suggests or at all. It was not his role to do physical work in the warehouse. When more staff were needed it was within Mr Haigh's discretion to employ agency staff, alongside which the company added 4 new members of staff to Mr Haigh's team.
122. For these reasons, we conclude:
- 122.1. The complaint of unfair dismissal is not well-founded. The claimant was not constructively unfairly dismissed.
- 122.2. At the relevant times the claimant was a disabled person as defined by section 6 Equality Act 2010 because of essential hypertension.
- 122.3. The complaint of harassment related to the claimant's disability is not well-founded and is dismissed.

- 122.4. The complaint of unfavourable treatment because of something arising in consequence of disability is not well-founded and is dismissed.
- 122.5. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

Employment Judge Hutchings

4 March 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

.6 March 2024.....

.....
FOR THE TRIBUNAL OFFICE

Notes

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

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Recording and Transcription

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

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