Case Number: 2301503/16

THE EMPLOYMENT TRIBUNAL

SITTING AT:	**LONDON SOUTH**
BEFORE:	**EMPLOYMENT JUDGE MARTIN**
Members	**Ms C Brown** **Ms B Wickersham**
BETWEEN:	**Mr D Carmichael** **Claimant**
	and
	Lifestyle Europe Ltd **Respondent**
ON:	**27 and 28 November 2017 and 29 November 2017 in chambers**

APPEARANCES:

For the Claimant: **In person**

For the Respondent: **Mr E Macdonald - Counsel**

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that:

1. The Claimant's claim of constructive unfair dismissal is dismissed
2. The Claimant's claims of disability discrimination is dismissed

RESERVED REASONS

1. By a claim presented to the Tribunal on 12 August 2016 the Claimant brought complaints of unlawful disability discrimination (Reasonable adjustments and arising) and constructive unfair dismissal. The Respondent defended all claims.

The hearing

2. The Tribunal heard from the Claimant and for the Respondent from Mr Paul Murrells – New Car Sales Director and Mr Mark Spowage – Franchise Manager.

3. The Tribunal had before it a full lever arch file numbered to 453, a chronology, some additional documents provided by the Respondent on the first day and from the Claimant on the second day.

4. At the start of the hearing the Employment Judge reminded the parties that the issues it was to consider were those which had been agreed and set out in the Order of Employment Judge Hall-Smith dated 6 December 2016 ("the Order"). During the Claimant's evidence, it became clear that he was suggesting that there had been an actual dismissal by the Respondent after his letter of resignation. This was not an issue in the Order and not something that the Respondent was aware of. Hence no evidence had been brought by it to defend this issue. The Claimant had instructed Solicitors in August 2017 and they had sent a revised draft list of issues to the Respondent. This had not been agreed and there had been no application to amend the issues prior to the hearing. It was explained to the Claimant that the only issues to be considered were those set out in his claim form which were reflected in the agreed issues in the Order.

5. The Claimant provided the Tribunal with a copy of the draft issues on day two and the Tribunal reminded him of the discussion the day before and confirmed that the issues were as set out in the Order. When giving submissions, the Claimant started by saying he would go through his issues and was reminded again that the relevant issues before the Tribunal were those set out in the Order.

6. At the end of day one, when the Tribunal was discussing what would happen on day two, the Claimant complained that the Respondent's witness statements had been served late and he had been unable to go through them fully with his solicitor. This was not mentioned before and there was no application for any adjournment of the hearing. The hearing finished at about 3.30 on day one and the Tribunal considered that notwithstanding any late service of the Respondent's witness statements, that the Claimant had the opportunity to go through them and to ascertain what questions he wanted to ask. This was raised in an email (the date is not known but it was after 20 November 2017) from the Claimant's solicitor to the Tribunal however there was no request for an adjournment then or by the Claimant at the hearing.

7. The Claimant has a medical condition and the Tribunal told him that he could ask for a break at any time. As he was representing himself, the Tribunal assisted him as much as he could in line with the overriding objective.

8. The issues

9. The issues were set out in an order dated 16 December 2016 as follows:

    a. The Claimant's complaints involve discrimination arising in consequence of disability (s15 Equality Act 2010) and of a failure on the part of the Respondent to comply with its duty to make reasonable adjustments for him.

    b. The Claimant contends that his resignation within the meaning of s95(1)(c) of the Employment Rights Act 1996 amounts to discrimination arising from disability.

    c. The Claimant's complaint of failure to make reasonable adjustments for him involves the following.

        i. A failure to provide any or adequate support for the Claimant;

        ii. Failing to follow the recommendations of the Claimant's General Practitioner which included working reduced hours, namely four and a half days per week and providing support for the Claimant from another member of its staff.

10. In addition to the Claimant's allegations of disability discrimination, the Claimant contends that the Respondent was in breach of the implied duty of trust and confidence, namely by

    a. Depriving the Claimant of an incentive involving a trip to Zambia, which the Claimant had succeeded in achieving.

    b. Preventing the Claimant from joining the Respondent company's pension scheme;

    c. Requiring the Claimant to cancel an operation which had been scheduled to take place on 29 February 2016.

The law

Unfair dismissal

11. s95 Employment Rights Act 1996 provides that an employee is dismissed by his employer if the contract under which he or she is employed is terminated by the employer (whether with or without notice) or 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.

12. **Western Excavating (ECC) Ltd v Sharp** [1978] ICR 221 CA, held that an employee would only be entitled to claim that he or she had been constructively dismissed where the employer was guilty of a '*significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound*

by one or more of the essential terms of the contract'. It was not sufficient that the employer was guilty of unreasonable conduct - he must be guilty of a breach of an actual term of the contract, and the breach must be serious enough to be said to be '*fundamental*' or '*repudiatory'*.

13. **Woods v WM Car Services (Peterborough) Ltd** [1981] IRLR 347 held that to constitute a breach it is not necessary that the employer intended any repudiation of the contract: the issue is whether the effect of the employer's conduct as a whole, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

14. The Respondent referred to the case law including:

    a. **Frenkel Topping Ltd v King** UKEAT/0105/15 which said that the breach had to be sufficiently serious to repudiate the contract.

    b. **BG plc v O'Brien** [2001] IRLR 496 which held that simply acting in an unreasonable manner is not sufficient

    c. **Malik v BCCI** [997] UKHL 23 which held that the purpose was to prevent an employee being unfairly and improperly exploited.

Disability discrimination

Reasonable adjustments

15. An employer is required to make reasonable adjustments under ss.20 and 21 Equality Act 2010 where a provision, criterion, or practice (PCP) applied, placed a disabled person at a substantial disadvantage in comparison with non-disabled persons. Failure to do so amounts to unlawful disability discrimination. Tribunals determining whether it would be reasonable for the employer to have to make a particular adjustment in order to comply with the duty must take into account the extent to which taking that step would prevent the disadvantage caused by the PCP (Equality and Human Rights Commission's Code of Practice on Employment).

16. The case of Environment Agency v Rowan [2008] ICR 218 set out guidance on how to approach reasonable adjustment cases. It held that the Claimant must show:

    16.1 There was a PCP

    16.2 The PCP put the Claimant at a substantial disadvantage in comparison to persons who did not share his disability

    16.3 The adjustment would avoid that disadvantage

    16.4 The adjustment was reasonable in all the circumstances

16.5 The failure to make the adjustment caused the losses alleged.

Discrimination arising

17. Section 15 of the 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."

18. It therefore needs to be established whether there was a causal connection between the unfavourable treatment and the disability. If there is the burden shifts to the employer to establish justification i.e. a proportionate means of meeting a legitimate aim.

19. This type of discrimination occurs not because the person has a disability, but because of something connected with the disability. It can only occur if the employer knows, or could reasonably be expected to know, that the person is disabled.

Burden of Proof

20. The burden of proof reversal provisions in the EqA are contained in section 136. Guidance is provided in the case of **Igen Ltd –v- Wong** [2005] IRLR, CA. In essence, the Claimant must, on a balance of probabilities, prove facts from which a Tribunal could conclude, in the absence of an explanation by the Respondent, that the Respondent has committed an act of unlawful discrimination. The Tribunal when considering this matter will raise proper inferences from its primary findings of fact. The Tribunal can take into account evidence from the Respondent on the primary findings of fact at this stage (see **Laing –v- Manchester City Council** [2006] IRLR 748, EAT and **Madarassy –v- Nomura International plc** [2007] IRLR 246, CA). If the Claimant does establish a *prima facie* case, then the burden of proof moves to the Respondent and the Respondent must prove on a balance of probabilities that the Claimant's treatment was in 'no sense whatsoever' on racial grounds.

21. The term 'no sense whatsoever' is equated to 'an influence that is more than trivial' (see **Nagarajan –v- London Regional Transport** [1999] IRLR 573, HL; and **Igen Ltd –v- Wong**, as above).

22. Tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating on why the Claimant was treated as they were, and postponing the less-favourable treatment issue until after they have decided why the treatment was afforded.

Was it on the proscribed ground or was it for some other reason? (*per* Lord Nicholls in **Shamoon –v- Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285, HL).

23. The Supreme Court in **Hewage –v- Grampian Health Board** [2012] UKSC has confirmed:

> *"The points made by the Court of Appeal about the effect of the statute in these two cases [Igen and Madarassy] could not be more clearly expressed, and I see no need for any further guidance. Furthermore, as Underhill J pointed out in Martin v Devonshires Solicitors [2011] ICR 352, para 39, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."*

Unauthorised deductions from wages

24. Section 13 of the Employment Rights Act 1996 states an employer shall not make a deduction from wages of a worker employed by him unless – the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction

Findings of fact and conclusions

25. The Tribunal has come to the following findings of fact on the balance of probabilities having heard the evidence and considered those documents it was taken to. The findings below are limited to those facts that are relevant to the issues and necessary to explain the decision reached. Even of not set out below, all evidence was considered by the Tribunal.

26. The Respondent is a Mazda main dealership based in Horsham. There are two other showrooms in Crawley and Eastbourne. The Claimant was first employed by the Respondent from February 2007 until early 2011 when he resigned to work for another organisation. He returned to work for the Respondent within a short period of time however this broke his continuity of service. He re-joined the respondent on 11 January 2011 and remained in employment until his contract ended on 17 May 2017 following his resignation on 18 April 2016. The Claimant had earlier tendered his resignation in January 2013 but rescinded it when he was offered a promotion. The Claimant now relates this to the pressure of his workload and the effect on his heart condition, however this was not communicated to the Respondent at the time. Indeed the documentation shows that he thanked the Respondent for the support in relation to his work and health and stayed working for the Respondent.

27. The Claimant was very successful and became the youngest sales manager and also the highest earning. Both witnesses for the Respondent praised his work ethic and results.

28. The Respondent accepts that the Claimant is a disabled person as defined by s6 Equality Act 2010 by reason of his heart condition. This is a longstanding condition and the Claimant has had a lot of medical treatment both in terms of general hospital and GP visits and also operations. The evidence was that the Respondent was sympathetic and supported him, allowing him time off when needed for appointments, surgery and recovery, and if not feeling well. There was no evidence prior to February 2016 of difficulty for him having treatment or taking time off work. The Claimant had an operation in 2012 and was given time off work for it and for his recovery.

29. When the Claimant re-joined the Respondent in 2011 he had to complete two complete years to be able to join the company pension scheme. By the time he had achieved this that scheme had closed and a new workplace pension scheme was put in place. The Claimant was therefore precluded from joining the old scheme and joined the new one instead. Although now forming part of this claim, the Claimant did not complain about this at the time.

30. The Claimant knew he was to have a cardiac operation from about October 2015 and he informed the Respondent of this. His evidence is that his operation was scheduled for 29 February 2016 although there was no evidence to substantiate this. He said that he told the Respondent about it and that they prevented him from having the surgery. His evidence is that Mr Mullens made it clear that to take time off at this time would put unfair pressure on Mr Spowage during what was the Respondent's busiest time. The Claimant ultimately had this operation some 20 months later on 30 October 2017.

31. The evidence from both of the witnesses for the Respondent was that whilst they knew there was to be an operation, the Claimant had not told them that a date had been scheduled. They denied telling him that he could not have the operation pointing out all the support they had given him in the past, including time off for operations and recovery.

32. There was no documentary evidence in the bundle confirming the appointment date, requesting time off for the operation, or complaining (or mentioning in anyway) that the Respondent had not allowed him time off for it. The evidence was that all other requests for time away from the workplace (for example holidays) were done by email and the Tribunal finds it surprising, if the Claimant had told the Respondent of the operation and was then prevented from having it, that there is no email or any other document in relation to this. The correspondence the Tribunal was taken to shows an amicable and friendly relationship between them.

33. Mr Spowage said he only knew of the operation when the Claimant told him that he had decided to cancel it as it was a very busy time in the business. His evidence is that he was only told once the Claimant had cancelled the operation and he was concerned that the Claimant had done this when the operation was required. At this time the Claimant also made requests for time off, including for his birthday. It may well be that there were some discussions relating to this time off and the needs of the business, however the Tribunal is satisfied that

the Respondent first did not know of the date of the operation and second did not prevent the Claimant from having it.

34. The Respondent had granted the Claimant's requests for time off for medical appointments, surgery and ill health without requesting any medical records save for the doctor's fit notes sent in from time to time. They trusted the Claimant and did not doubt his medical condition. However, in January 2016 they saw a Facebook post showing the Claimant in the USA skydiving. The Respondent knew that the Claimant had been waiting for some months for an operation and was surprised to see this. The Respondent then questioned what the Claimant had said about his medical condition and asked him for his doctor's notes to confirm the situation as there was no medical information before them.

35. The Claimant referred to a document from his GP which he says was given to the Respondent in January 2016. This document has a date typed of 27 February 2017, a manuscript note saying "*amended 16/3/17*" and a typed endorsement in italics saying it was *"emailed to patient at his request – 3.3.17*". The Claimant's evidence was that the date was wrong and should have been 2016 rather than 2017 and insisted it had been shown to the Respondent. The Tribunal's factual finding on the balance of probabilities is that this letter was written, as the date suggests, on 27 February 2017. The letter says "*we have only just found out that he has had to cancel his procedure in Feb 2016 due to significant work pressure*". This implies that it was sent some time after February 2016. The Tribunal notes that the document has three dates on it - all in 2017. The Tribunal does not accept the dates were an error and finds that the document was produced in 2017 as the dates show. By this time the Clamant had left the Respondent's employment and the Tribunal is satisfied it was not given to them. The Tribunal find it reasonable that the Respondent should ask for confirmation of the Claimant's medical condition considering the Facebook post and the lack of any medical information.

36. On18 April 2016 the Claimant was awarded Sales Person of the Year.

37. Mazda ran an incentive scheme; the winners were given a holiday in Zambia. It was available to the top 33 dealerships with two winners for the most improved dealership. The Claimant had been told that if the Horsham dealership won, he would go on the holiday. Horsham came 35th. There were some cancellations from other dealerships in the top 33 and Mazda asked the MD of the Horsham dealership if he wanted to take the place. He was unable to and offered the place to Mr Mullens who could not go, and it was then offered to Mr Spowage (effectively going down the hierarchy) who accepted it.

38. Mr Spowage told the Claimant on 19 April 2016 he was going. The Claimant was upset as he thought he should go as he was told he could go if the Horsham dealership won. He alleged that an employee at Mazda had phoned him telling him he was going on the trip. He was unwilling or unable to provide the name of the person who he says rang him. The Respondent says that the person at Mazda dealing with the incentive had informed them that he had not called the

Claimant.

39. On 18 April 2016 the Claimant wrote a resignation letter which was received by the Respondent the following day. The Respondent was extremely surprised at his resignation and the timing coming the day after he received the award. The Claimant said in evidence that he wrote the letter on the 19 April 2016 after he heard about the Zambia trip, but backdated it so that the notice would end on a Monday. The letter said:

"Dear Mark

I'm sorry to inform you that I will be leaving Lifestyle Mazda Horsham on a date to be agreed by both of us. I'm sorry to be doing this, however I feel that I need to progress further in my career outside of Lifestyle Motor Group.

I do honestly love my position at Horsham and has been a fantastic experience working alongside you, and my team but also turning the dealership into the dealership it is today. It will carry on improving the longer it is established and having the great products as we do.

Please can you confirm when a final laving date is agreed?

I wish you and Lifestyle Motor Group very success for the future"

40. The Tribunal does not accept that the Claimant backdated his resignation letter. The Claimant's explanation that he backdated it because he wanted his notice to end on a Monday is not accepted as the letter makes no reference to any termination date, leaving that date '*to be agreed'*. The Tribunal finds that the Claimant decided to resign and wrote his resignation letter on 18 April 2016 which was before he knew about the Zambia trip.

41. Mr Mullens and Mr Spowage really wanted the Claimant to stay and the Tribunal is satisfied that they tried to persuade the Claimant to stay and to find out his reasons for wanting to leave. The Claimant did not given them any reason, including not saying that the Zambia trip had anything to do with his decision, thus further backing up the Tribunal's finding that the resignation letter was written on 18 April 2016. The Respondent was about to be bought out, and Mr Mullens and Mr Spowage knew there would be good opportunities for the Claimant in the new structure but were unable to discuss it due to non-disclosure agreements. Mr Spowage offered the Claimant the Zambia trip if it meant the Claimant would stay.

42. In his evidence the Claimant made assertions that the Managing Director, Mr Isted dismissed him on 5 May 2017 during a conversation. This did not form part of his pleaded case in his claim form and did not form part of his witness statement. As this was not part of the claim brought by the Claimant and not part of the agreed issues, the Tribunal has made no findings save to say that the Claimant was put on garden leave that day as is common in the industry.

43. The same day on 5 May 2017, the Claimant was offered employment at another Mazda dealership, Riverdale. The letter of offer said:

"Further to our recent discussions, we now wish to formally offer you employment with Rivervale

Cars Limited ("The Company") in the position of Sales Manager"

44. The Claimant's evidence was that immediately on being placed on garden leave he drove to Riverdale and was immediately offered employment and that he had no discussions with them before. The Tribunal finds this to be unlikely, especially as the letter refers to *"recent conversations"* in the plural which indicates that there had been ongoing discussions and taking into account usual recruitment practices, especially as the position offered was a management position.

45. The Claimant's letter of resignation is set out above. The Claimant also sent other communications to the Respondent after his resignation. These communications are very friendly and cordial. The Claimant says he was just being professional, however the Tribunal finds that these communications go above mere professionalism and show a positive relationship notwithstanding the Claimant's resignation. An example is an email from the Claimant t Mr Murrells on 3 May 2016 when he wrote:

"Hi Paul

Hope you had a good weekend.

As discussed on Saturday, I'm, owed a lieu day from March, are you ok that I can take this next week please?"

Similarly emails around the time the Claimant says his operation was cancelled are also very friendly and do not explicitly of implicitly reveal any problems, certainly the operation was not mentioned.

46. On or about 28 December 2016, about seven months after the Claimant left the Respondent's employment he sent an email to Mr Spowage:

"*Hi mate, I really hope u had a good Xmas with ur family. I texted Paul about having a chat but he didn't reply. If u think it's worth following up about maybe coming back, then let me know. Have a good new year mate"*

47. The effective date of termination of the Claimant's employment with the Respondent was 17 May 2016. The Claimant's remuneration was a mixture of basic salary and commission. Commission was payable post termination for the period in which the Claimant worked i.e. up to 17 May 2016. The Claimant's entitlement to basic pay stopped on the effective date of termination.

48. There were three payslips before the Tribunal. The first is dated 25 May 2016 in the sum of £1,588.73 made up of a mixture of basic salary and bonus to 17 May 2016 (payslip 1); the second is dated 24 June 2016 in the sum of £1,782.06 (payslip 2) comprising basic salary for the period 18 May to 31 May 2016 and bonus and the third is dated 24 June 2016 (payslip 3) comprising a bonus payment in the sum of £2,915.42. Payslips 1 and 2 were paid in full.

49. The Respondent realised it had mistakenly paid the Claimant basic pay in payslip 2 for a time after the Claimant's employment had ended. This sum was

therefore deducted from the payment in relation to payslip 3 to correct the error. The Claimant's claim is that he is entitled to payment for all three payslips in full. The Respondent wrote to the Claimant to explain what had happened on 1 August 2017. The Claimant does not accept the explanation.

50. The Tribunal accepts the Respondent's evidence and finds that the Respondent mistakenly paid the Claimant basic pay in payslip 2 and on noticing this rectified the mistake when it made payment for payslip 3. The Claimant gave no explanation as to why he thought he should receive basic pay for the period 18 May to 31 May 2016 when his contract of employment had ended.

51. The Tribunal has found that the Respondent did not receive the Claimant's GP letter of 27 February 2017. This letter talks about the Claimant working 4.5 days on average per week. The Tribunal finds that given this, the Respondent did not do not fail to make this reasonable adjustment. This is the adjustment set out in the list of issues, however there was evidence that the Respondent was asked by the Claimant to have one day off per fortnight, thereby making his average working week 5 days. The Respondent agreed this, but on hearing that it would be unpaid, the Claimant did not accept and carried on working 5.5 days per week.

Constructive unfair dismissal

52. The Claimant relies on three matters as being breaches of the implied term of trust and confidence entitling him to resign and claim constructive unfair dismissal. The Tribunal has considered them individually and cumulatively.

Zambia incentive

53. This was an incentive scheme run by Mazda and facts in relation to this are set out above. The Tribunal has found that the Claimant knew that Mr Spowage was to go on the trip on 19 April 2016 and that the Clamant had written his resignation letter on 18 April, before he knew about this. Therefore, the Zambia trip could not have formed part of his reason for resigning.

54. Even if the resignation letter had been written after the Claimant was told about the Zambia trip, the Tribunal finds that the agreement with the Claimant was not binding in the circumstances, given that the Horsham dealership was not in the top 33 dealerships and not one of the top two most improved. The Tribunal notes first that Mr Spowage specifically wanted to tell the Claimant himself that he had been offered and had accepted the trip out of sensitivity to the Claimant, and also that Mr Spowage offered the Claimant the holiday if it would mean that the Claimant rescinded his resignation and stayed with the Respondent. The Tribunal recognises that the Claimant may have been disappointed and frustrated that he was not given the holiday, however the Tribunal does not find in the circumstances that the Respondent committed a fundamental breach of contact. The test is a stringent test and the Claimant has not satisfied it.

His operation scheduled for 29 February 2016

55. The Claimant's case is that the Respondent did not allow him to have scheduled heart surgery on 29 February 2016 and that this surgery was cancelled. The chronology as the Tribunal has found it is set out above. There was no documentary evidence to back up the Claimant's claim. There was no document confirming the date of the surgery, there was no document referring to it being cancelled (for example an email chain or a grievance). It was not mentioned in the resignation letter of at any time thereafter until this claim. The evidence from the parties is completely contradictory and the Tribunal must decide on the balance of probabilities which evidence to prefer.

56. The Tribunal on balance prefers the evidence of the Respondent. The reason for this is that there is no documentary evidence to back up the Claimant's claim and given that the Claimant accepted the Respondent had always allowed him time off for medical issues it is unlikely that the Respondent would have told him he could not have the operation.

57. The Tribunal heard evidence of the very good relationship between the Claimant and Mr Spowage. This would also make it unlikely that he was prevented from having the operation. The evidence was that the Respondent valued his employment with them and did everything it could to retain his services. It is unlikely in these circumstances that it would have put his health at risk by not allowing him to have time off for the operation.

Pension issues

58. The Claimant's pension issues are set out above and relate to 2013. The Respondent's evidence is that when the Claimant had the necessary qualifying service to join the pension scheme, the pension scheme was changed and the old (and presumably more advantageous scheme) was closed to new entrants. The Tribunal does not consider this to be a breach of the implied term of trust and confidence but more a case of bad timing. In any event, this occurred about three years before the Claimant's resignation and cannot have formed any significant part of the reason why the Claimant resigned. The Claimant himself said that this only played a very small part in his decision to resign.

59. The Tribunal finds that the Claimant resigned of his own volition and that he was not constructively dismissed by the Respondent. The operation issue, even if it had occurred as the Claimant said, happened in the last week of February 2016. The Claimant did not resign until 5 May 2016 and did not make any complaint about this. If it did happen as he said (which the Tribunal has found it did not), then he waited too long before resigning and thereby affirmed the contract and cannot rely on this as a reason to resign and claim constructive unfair dismissal.

60. The Claimant's claim of constructive unfair dismissal is therefore dismissed

Disability discrimination

Reasonable adjustments

61. The adjustment referred to in the agreed issues was being allowed to have the operation on 29 February 2016. Give the findings made, the Tribunal does not find this to be made out. The Respondent did not know of the operation on 29 February 2016 and therefore was not able to either allow time off or refuse it. There was no evidence that the Claimant asked for support from another member of staff.

62. The Tribunal finds that the Respondent offered an adjustment to the Claimant's hours as the Claimant had asked but the Claimant did not take them up on this offer. The Tribunal finds he did not ask for 4.5 days average working per week. Even had the Claimant requested 4.5 days average weekly working, the Tribunal notes that the Claimant's subsequent employment with Rivervale (and his employer after that), involved working 5.5 days per week and that he refused the Respondent's offer of working 5 days per week on average. The Claimant said he was allowed to work less in practice but brought no evidence to substantiate this. Given the Claimant was working full time for his new employers, the Tribunal does not find that the adjustment would have avoided any disadvantage. The Claimant in any event did not point to any substantial disadvantage he had in working full time.

63. The second part of the reasonable adjustment claim is that the Respondent failed to provide any or any adequate support. At the start of the hearing the Claimant clarified this as to be limited to allowing him time off for the operation he says was booked for 29 February 2016 and working 4.5 days per week. These have both been dealt with above.

Discrimination arising from disability

64. The claims in relation to disability arising are that the Respondent failed to carry out reasonable adjustments and his resignation amounted to discrimination arising from disability. The Tribunal's finding is that this is not made out. Even if it had, the Tribunal accepts the Respondent's submission that neither of these matters amount to discrimination arising from disability. There has to be some causal link between the something arising and the Claimant's disability. The 'something arising' relied on by the Claimant is the failure to make reasonable adjustments, the Zambia trip, the pension issue and his operation.

65. The Tribunal accepts the submission that if a failure to make reasonable adjustments was the 'something arising' from disability that would mean that every claim under s20 and 21 Equality Act 2010 would also be a claim under s15 Equality Act.

66. The Tribunal has found as a fact that the Respondent did not know of the operation on 29 February 2017 and this therefore cannot amount to discrimination arising.

67. The Tribunal finds that the Zambia trip and the pension issue were not related to the Claimant's disability. The mere fact that the Claimant has a disability and receives what he perceives to be less favourable treatment in some way is not

the legal test. The 'something arising' must relate to his disability which is not the case here.

68. This part of the Claimant's claim is dismissed

Issues relating to pay

69. The Tribunal has set out its findings above. It has found that the payment of basic pay as shown in payslip 2 was a mistake which was rectified when payslip 3 was paid. This accounts for the discrepancy in the payment for payslip 3. This part of the Claim is dismissed.

70. In all the circumstances the Claimant's claims are dismissed.

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Employment Judge Martin
Date: 5th December 2017