



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE HALL-SMITH

MEMBERS: Ms BC Leverton
Mrs C Upshall

BETWEEN:

Mr B Addems

Claimant

AND

Systems Hygienics Ltd

Respondent

ON: 12, 13, 14, 15, 16 June 2017;
(Chambers) 11 August 2017, 11 September 2017

APPEARANCES:

For the Claimant: Ms A Stroud, Counsel

For the Respondent: Mr J Mitchell, Counsel

RESERVED JUDGMENT

THE UNANIMOUS JUDGMENT OF THE TRIBUNAL is that:-

1. The Claimant was not dismissed by the Respondent within the meaning of section 95(1)(c) of the Employment Rights Act 1996 and accordingly the Claimant's complaint of unfair constructive dismissal is accordingly dismissed.
2. The Claimant's complaints of unlawful disability discrimination are not well founded and are accordingly dismissed.
3. The Claimant's complaint of detriments short of dismissal are not well

- founded and are accordingly dismissed.
4. The Claimant was not automatically unfairly dismissed by the Respondent.
 5. The Claimant's complaint of unauthorised deductions from wages is well founded to the extent set out in the Tribunal's Reasons for its Judgment.
 6. Unless the parties inform the Tribunal in writing no later than **1 December 2017** that they have reached agreement on remedy, a remedy hearing will be listed.

REASONS

1. By a claim form received by the Tribunal on 7 June 2016 the Claimant Mr Ben Addems brought complaints of unfair constructive dismissal, unlawful disability discrimination, detriment short of dismissal pursuant to section 45 a of the Employment Rights act 1996, unauthorised deductions from pay and breaches of the working time regulations against the Respondent, System Hygienics Ltd.
2. At the hearing the Claimant was represented by Ms A Stroud, Counsel, who called at the Claimant to give evidence before the Tribunal. The Tribunal also read a witness statement from Ryan Gray on behalf of the Claimant.
3. The Respondent was represented by Mr J Mitchell, Counsel, who called the following witnesses on behalf of the Respondent, namely, Jeanette Peters, human resources officer, Mr Stephen, managing director of the Respondent company. In addition the tribunal read witness statements from Claire Butters, Terry Gibbins, Bethany Killy and Sharon Morris on the half of the Respondent. At the was a bundle of documents before the tribunal at contained in for lever arch files.

The issues:

4. An agreed list of issues was set out at pages 99 – 114 of the bundle. In broad terms the Claimant's complaints involve disability discrimination, breaches of the working time regulations, constructive unfair dismissal, and unauthorised deduction of wages.
 - 4.1 The Respondent accepts that the Claimant was a disabled person at all material times by reason of Crohn's disease. The Claimant's complaints of discrimination are complaints under section 15 of the equality act 2010, namely discrimination arising in consequence disability and under sections 20 and 21

of the 2010 act at namely failures on behalf of the Respondent to comply with its duty to make reasonable adjustments for the Claimant.

4.2 In relation to reasonable adjustments in the Claimant contends that the Respondent failed to make reasonable adjustments, by making the Claimant work excessively long hours and/or working without support.

4.3 The Claimant contends that the following reasonable adjustments should have been applied to him namely changing his duties, changing his shift patterns, and the allocation of sufficient support for him in terms of personnel.

4.4 The Respondent denies the alleged or any discrimination of the Claimant.

4.5 The Claimant alleges that he had been subjected to a detriment (short of dismissal) by any act or deliberate failure to act on the part of the Respondent, on the ground that the Claimant had alleged that the Respondent had infringed his rights under the working Time regulations.

- a. The cancellation by Mr Liddiard of the Claimant's non physical duties upon his return from leave in early December 2015 and the comments at he made at that time
- b. Stephen Liddiard's obvious irritation at the Claimant when he refused to work certain shift patterns.
- c. Stephen Liddiard's decision to demote the Claimant on 13 January 2016.

4.6 At the Respondent contends that an amendment is required to pursue the above allegation. Was the allegation made by the Claimant in good faith?

4.7 Whether such complaint presented within the time limit required by section 48 (3)(a) of the 1996 act.

4.8 Whether the Respondent was in repudiatory breach of the Claimant's contract of employment in the following respects

- i. Not to damage or destroy the term of trust and confidence without reasonable cause;
- ii. to take reasonable care of the health and safety of the Claimant;

- iii. to provide the Claimant with adequate support and facilities.

4.9 The Claimant relies upon the following breaches, namely

- i. His demotion;
- ii. the requirement for him to work shift patterns that were injurious to his health,
- iii. the requirement for him to work shifts without adequate support,
- iv. Mr Liddiard's decision to overturn the arrangement reached with Sharon Morris for the Claimant to work on nonphysical duties, and the comments he made at the time.

4.10 Whether the Claimant resigned in response to the alleged breaches?

4.11 Did the Claimant delay too long before terminating his contract employment in response to the Respondents alleged breach/breaches?

4.12 The Claimant contends that the reason or principal reason for his dismissal was that he had asserted that he refused or proposed refused to comply with the requirement which the Respondent imposed or proposed to impose which was in breach of the working time regulations pursuant to section 101 of the 1996 act.

4.13 In relation to the Claimant claim under regulation 10 of the working time regulations whether the Claimant is entitled to claim a failure to allow rest period, when he failed to plead any request for such a rest period?

4.14 Whether the Claimant had requested to be allowed rest periods of 11 consecutive hours in any 24-hour period?

4.15 Whether the Respondent refused to allow the Claimant to take 11 consecutive hours rest in any 24-hour period?

4.16 In relation to regulation 11 of the WTR, has the Claimant requested to be allowed a rest period of at least 24 hours in any seven day period?

4.17 Did the Respondent refused to allow the Claimant a rest period

of at least 24 hours in any seven day period?

4.18 Whether the Claimant's complaints of breaches of the working time regulations were received by the Tribunal within the time limits required by the regulations?

4.19 In relation to the Claimant's complaint of unauthorised deductions from wages, whether the Claimant is entitled to be paid for 3 February 2016?

The Facts

5. The Respondent, Systems Hygienics Limited, is engaged in the business of the ongoing maintenance of ductwork systems. The maintenance work undertaken by the Respondent involves the cleaning of ductwork and also includes the testing of fire dampers. Fire dampers are installed in ductwork which automatically closes in the event of smoke or fire. Fire dampers are required to be tested annually.
6. The Respondent company employs a number of members of staff, fifteen of whom work in the office, six are involved in sales and the remainder are operatives who work on site. The Respondent's activity covers the whole of the United Kingdom.
7. Stephen Liddiard, the Managing Director of the Respondent company decided in 2012 to extend the fire damper aspect of the business. The proposed expansion involved the remedying of fire dampers which had not functioned correctly and also identifying whether additional dampers were required.
8. The Claimant, Ben Addems, had been involved in the ductwork industry since 2007. Prior to his employment with the Respondent he had been involved in the insulation of ductwork for a period of six years. The Claimant applied for the position of Estimator at the Respondent company. Although the Claimant was not successful in his application for the role of Estimator in October 2013 he had impressed Stephen Liddiard.
9. Stephen Liddiard considered that the Claimant could have a role in the Respondent's expanding business involving fire damping work and he approached the Claimant to have a discussion with him. The Claimant stated that he was not happy working as a fitter and that he wanted to move away from site work into an administrative role.
10. Stephen Liddiard and the Claimant had a discussion about what was involved in fire damping work and it is common ground that the Claimant stated that he had been brought up to work hard and to do a fair day's work. There was no formal interview meeting between Stephen Liddiard and the Claimant relating to the fire damping role. The Claimant accepted

that there had been a number of meetings and that Mr Liddiard did raise concerns that a number of operatives were not on site for as long as they had been claiming.

11. It was clear to the Tribunal that Stephen Liddiard was impressed with the Claimant and wanted to employ him. It was agreed that the Claimant would be paid on the basis of an hourly rate and that he would be paid at a supervisor's rate, which Mr Liddiard stated amounted to the best rate he could be paid. The role did not in fact involve the Claimant in supervising staff.
12. There was an issue between the parties as to whether, as the Claimant alleged, Stephen Liddiard had stated the Claimant would move into a managerial role after a period of ten months. Stephen Liddiard denied that he had made such an offer but he agreed that he did say that the Respondent would provide every opportunity for people to move on but that he would not have put a timeframe on it.
13. The Tribunal considered that it was unlikely that Stephen Liddiard would have raised a precise period of months before the Claimant had actually started his employment with the Respondent. However it was clear that Stephen Liddiard was anxious to employ the Claimant, and we consider it was likely there was discussion about the Claimant's progression in his employment and that the matter would be considered in due course.
14. The parties signed a contract on 24 January 2014, pages 124-127. The contract guaranteed the Claimant a forty hour week, Monday to Friday, and that the working day would consist of eight hours' working plus one hour for breaks. The Claimant actually commenced his employment with the Respondent on 14 January 2014. The Claimant's contractual rate of pay was £8.76 per hour for basic hours worked. In relation to travelling allowance the contract provided at Clause 2 the following:-

- a) **A travelling allowance based on a radius system, will be paid in addition to hours worked, to compensate travelling to a working site in your own time.**

When required to travel as part of an 8 hour working day, no radius is payable. For example: if required to attend to Head Office for alternative duties and these, plus driving times, for a working eight hour period, no radius is payable. Or for example, if required to call to a site for a short period and collect something and then return – all within eight hours – no radius is payable.

- b) **Your reasonable agreed travel expenses will be paid in full, on submission of receipts.**

c) Lodging away will be necessary on occasion and will be subject to current lodging allowance payments.

15. The Tribunal found that the Claimant was a dedicated and hard working member of the Respondent's staff.
16. There was an issue between the parties as to the form of induction undertaken by the Respondent for the Claimant. The Respondent's new employee induction record, pages 12?-131, listed a number of matters under various headings such as Quality/Environment, Administration, General, Health and Safety, Fire Regulations and First Aid. It was the Claimant's case that his induction merely involved a tick box exercise. Janet Peters, the Respondent's HR Manager, maintained that she carried out the induction with the Claimant, and the Tribunal noted that the Claimant had signed the new employee induction record on 27 January 2014.
17. The Claimant is a disabled person within the meaning of Section 6 of the Equality Act 2010 by reason of Crohn's disease. At the outset of his employment the Claimant did not raise with the Respondent that he had Crohn's disease or that there was a possibility that his disability might impact on his work performance or his ability to undertake his job role.
18. The Claimant's working environment appears to have been fairly relaxed as evidenced by an email from the Claimant to Stephen Liddiard dated 25 March 2014, page 359:

Sorry Steve,

Can't come in today as having to do my brotherly duties and babysit for my sister but I promised I would send over the pictures for Stratford City today.

They will come over in a few files as this is my personal account and I don't think Hotmail doesn't let me send over them all at once so I apologise in advance.

Regarding TI and Heathrow would it be OK to do half a day in the office tomorrow and on Friday in the day please so I don't lose a day's money as I have a family thing I can't get out of Friday night and won't be able to make it but I've been through with Barry what I want done that night and he will just be testing dampers that just needs the links replacing which he can do by himself.

All OK to complete work in WDF Stores tomorrow night but I will let you know everything when I come in.

19. On 7 June 2014 the Claimant was admitted to hospital. The medical discharge summary, page 143 stated the following:-

Mr Addems was admitted to Conquest Hospital on 2/6/14 with abdominal pain and vomiting after being transferred from ETGH.

On admission bloods showed a raised CRP and WCC. CT abdomen showed multiple loops of thickened small bowel with oedema and inflammatory changes but no perforation, abscess or evidence of fistula. He was therefore managed with IV hydrocortisone for five days.

Mr Addems is now pain free and mobilising around the ward without any difficulty. Due to the findings on his CT he will require a course of Infliximab and Azathioprene once screening blood tests are available.

20. The discharge summary continued by stating that the Claimant was due to go on holiday on Saturday 7 June but that he had been advised that this was not a good idea due to his ongoing exacerbation of Crohn's. Stephen Liddiard had been unable to contact the Claimant on 2 June 2014. On the following day Stephen Liddiard was informed by a customer at the site where the Claimant was due to work that the Claimant had not been seen on site on Monday and Tuesday.
21. Eventually the Claimant contacted Stephen Liddiard on 4 June 2014 and said that he was in hospital in Hastings but that he was in there for personal reasons. Understandably, as the Tribunal considered, to begin with the Claimant was evasive as to why he was in hospital and that he said no more than the matter was a personal issue.
22. The Claimant returned to work on Thursday 12 June 2014. Stephen Liddiard asked him why he had been in hospital and the Claimant informed him that he had Crohn's disease and that he had had it since his teens.
23. Stephen Liddiard asked him why he had not been told about it from the beginning and the Claimant replied that it was a personal issue. It was agreed that the Claimant should work in the office for the rest of the week until Stephen Liddiard had obtained a better understanding of the medical position and the effect the condition might have on his work.
24. The Claimant gave Stephen Liddiard permission to write to his general practitioner. On 16 June 2014 Stephen Liddiard wrote to the Claimant's GP, page 114. The letter stated the following:

Mr Ben Addems who is a patient of yours, has told us that he

suffers from Crohn's disease and has recently been hospitalised from 1-6 June 2014 due to his condition and is now receiving medication of which you are aware.

As an employer we have a duty of care to ensure that Ben is not put at any risk whilst carrying out his new or normal duties. Briefly outlined below is a description of the tasks Ben usually carries out on a daily basis:

Driving, man-handling and lifting of materials (up to a maximum of 25 kilos), climbing ladders and step ladders and erecting mobile scaffolds. He also carries out the cutting and drilling of sheet metal ductwork which involves working at height and can involve stretching.

Following Ben's stay in hospital he is now on a course of steroid tablets and will be receiving regular Infliximab injections every eight weeks for the next year. I also understand Ben has been put on a low residue diet to help his condition. I would be grateful if you could confirm whether his medication is likely to affect his day-to-day duties and may have any side effects which may put him at danger whilst at work.

Your urgent response would be very much appreciated. Can you please ensure your reply is marked as Strictly Private and Confidential – Addressee Only.

25. On 18 June 2014 the Claimant's GP replied, page 145:

Thank you for your letter regarding Ben.

I am pretty confident that his condition and medication should not have an impact on his work duties, nor would I expect any side effects to put him in danger whilst at work.

Obviously Ben needs to report any difficulties he has directly to me and I would be happy to liaise with you in the future if anything changes but as things stand, I am sure we shall not run into any problems.

26. Stephen Liddiard undertook his own research into the condition and understood that a good diet and plenty of rest were recommended. Stephen Liddiard told the Claimant that he should make sure that he got plenty of rest and the Claimant replied by saying that he didn't need sleep and that he always got by with very little sleep indeed.
27. Stephen Liddiard was concerned about the Claimant's condition and he was not reassured when the Claimant ceased treatment involving steroids.

However Stephen Liddiard considered that the Claimant should have another operative to work with him when undertaking remedial work and he asked the Claimant whether he knew someone local who the Respondent could employ to work alongside him. The Claimant identified an individual, Ryan Gray, who joined the Respondent company on 15 September 2014 as the Claimant's assistant.

28. On 15 September 2014 the Claimant sent the following email to Stephen Liddiard, page 38?:

Morning Steve,

Before I begin I don't want you to take anything personally or affect us or me working for the company but I feel that emailing you is my best option to get everything out as for reasons why we haven't been able to sit down and talk about this.

I want to start by thanking you for my job partly being in control of the remedial side of the company and I really enjoy what I do but I feel like I'm getting disheartened lately at the fact that I am having to work a stupid amount of hours (which I don't mind doing) but not a great wage (£8.76 ph). I left Tobel in January after you gave me this opportunity and my six month probation finished in July, I still haven't signed my full time contract and even though when I have asked you have told me I've nothing to worry about I still don't feel like I don't have any job security.

Please correct me if I'm wrong but I would assume that I am the only person who travels the length and breadth of the country working day, night or week-ends testing, quoting, surveying, preparing drawings, writing reports and completing remedial projects within the company. I have now obtained my CSCS Manager's Black Card (I think I am the first employee outside you and Barry to pass the MAP exam) and I have just paid for me to take the IOSH Managing Safely course.

I really enjoy what I do and love the fact that it is left for me to sort out projects, interact with clients and complete the jobs. I don't feel like I should need to make myself ill just to break even each week. I managed to teach myself up to a certain standard that is three quarters of the way there but I do need help to get me to that final standard you expect from me within the office.

You should know me by now Steve and I know I would work any hour of any day anywhere if you needed me to do so, I feel this is a place that I would love to stay for a very long time and I don't plan to change in any way at all but I would just like to feel like I'm a Remedial Manager/Supervisor who could earn a

reasonable wage working hours I can physically manage.

Please tell me if you think I'm speaking out of turn at all. I just felt that I needed to get this off my chest as it was starting to get me down.

Thank you for taking the time to read this message and hopefully we'll get an opportunity to sit down very soon and talk about this.

29. Stephen Liddiard replied on 15 September 2014, page 390:

I have no problem with your performance or commitment as you know and I apologise for not having your review. I do not have any problem with you setting out your feelings but I would have appreciated you asking me to talk to you to discuss this.

I will make sure that I sit down with you this week and have your review and get your contract sorted.

Let me know what day suits you both.

30. On 19 September 2014 Stephen Liddiard conducted a six month review with the Claimant pages 344-345. The review should have been undertaken in July 2014. The review reflected the fact that the Claimant's quality of work and his knowledge of work was very good but it was noted that his written work needed to be improved. The Claimant accepted that at the meeting he did not raise any issues with his health or that his contracted hours were too much for him to cope with. In his oral evidence, in cross-examination, the Claimant maintained that he had raised such issues on other occasions with Stephen Liddiard.
31. Following the review meeting, Stephen Liddiard, wrote the following to the Claimant on 22 September 2014, page 393:

Following on from our meeting on Friday, 19 September 2014 I have pleasure in confirming that your position with Systems Hygienics Limited is now permanent and that your salary will increase to £9.93 per hour with effect from 6 October 2014.

32. It was the Respondent's case that the Claimant had claimed more hours than actual hours worked. The Claimant accepted that if a particular job was undertaken more quickly than anticipated, the Claimant and his work colleagues would be paid the full daily rate. A more serious issue arose in circumstances where the team did not complete work in the allotted time and had left work early to complete it the following day thereby incurring further expenses for the Respondent's customer.

33. Following complaints from customers about short hours worked on site and jobs being left unfinished, the Respondent had a meeting with it's operatives including the Claimant on 30 March 2015. Stephen Liddiard followed up the meeting with a letter to the Claimant dated 7 July 2015, pages 430-431 which bulleted a number of concerns, including the following:

- **Notification of the complaints that our company is receiving from customers relating to short hours of working, jobs being left unfinished, our falling standards and poor paperwork.**
- **A message of honesty and integrity was again delivered together with our request for feedback on time duration on jobs as it was during one of the previous operative's meetings held in Harlow. We felt that we needed to do this again due to the fact despite asking for these qualities on several occasions, the company had been receiving more complaints relating to short working hours in particular than ever before.**
- **When we checked the short hour complaints on the van trackers we found them to be upheld leaving the company in the embarrassing position of having to try and explain why they took place.**
- **Your job not only includes carrying out the task assigned but also consists of completing your paperwork correctly, giving feedback on time taken, providing reasons if a job cannot be carried out, providing a solution to allow the work to be completed and to ensure your paperwork is sent into the office at the earliest opportunity or by the latest with your timesheets on Tuesday of the week following the work.**

34. On 3 October 2014 the Respondent sent the Claimant copies of his contract of employment and a copy of the terms and conditions of employment.

35. On 14 July 2015 Stephen Liddiard wrote to the Claimant, page 438, pointing out the following:

Having received your timesheet on Monday the timesheet was not completed in accordance with bullet point 8 in the Working Hours and Paperwork Policy for Site Operatives:

Timesheets must state actual hours worked, on site, could you please ensure that you fully comply with this requirement.

Please speak to Heather if you need any help with timesheet requirements.

36. The Tribunal found the Respondent's operatives, including the Claimant, endeavoured to record the hours actually worked on their timesheets, pages 190-191, but that all operatives reverted to the previous practice of recording a guaranteed eight hour working day, rather than the actual hours worked, in circumstances where the proforma timesheets did not cater for the level of detail required, and the inability of payroll to cope with the level of detail required. We noted that Stephen Liddiard had signed off a timesheet on 11 September 2015, page 183.
37. In October 2015, the Claimant was promoted to the position of Service and Maintenance Manager. The Claimant's salary was increased to the sum of £12 per hour, page 469.
38. The Claimant's promotion followed from a meeting between the Claimant and Stephen Liddiard in September 2015, when he told Stephen Liddiard that he could earn £230 a day working in London and what was he going to do about it. In his witness statement Stephen Liddiard stated the following in paragraphs 96 to 99 of his witness statement:

In September 2015 BA came in to see me to say that he could earn £230 a day working in London and asked what I was going to do about it. I said "what are you telling me?". I said "I can't match that." I told him I thought that £230 a day was a lot and asked him if he was sure that he would earn that. I said that if he could and was sure that it was true then it was his decision but we could not match the figure.

BA told me that he could not continue to work on the money he was earning. Initially I said I could not give him any more money but he said he wanted more if he was to continue working with us. I said that the most I could offer him was £12 per hour and BA responded that this was less than he was thinking of.

I told BA that £12 per hour was the maximum which we could pay and that if we were to pay him that sum it would be strictly subject to him taking on more responsibility.

I told him that this increased responsibility would involve organising materials and labour, contacting the customers and ensuring the paperwork and systems were properly dealt with. That additional responsibility would go with the higher pay. I did say to him that I did not think he was anywhere near ready. Nevertheless he wanted to go ahead on that basis."

39. On 18 October 2015, the Claimant celebrated his 30th birthday and the Claimant subsequently went on holiday to Las Vegas. Unfortunately the

Claimant was unwell during his holiday and although he was due to return to work on 2 November 2015, he returned to work on 3 November 2015, page 175.

40. On 12 November 2015 the Claimant was admitted to hospital and he was discharged on 16 November 2015. The discharge note on pages 148-149 stated that the Claimant had been admitted with six months' history of mild abdominal pain and concluded with the following advice:

The patient is now fit to be discharged with consultant follow-up and further Infiximab infusion. Dr Ratnarajah has strongly advised him to stop smoking and eat a healthy well balanced diet.

41. The Claimant was readmitted to hospital on 22 November 2015 as the result of a flare up of his Crohn's condition and he returned to work on 23 November 2015. Stephen Liddiard had been away on holiday when the Claimant returned to work and Sharon Morris, Financial Controller, advised the Claimant to work from the office. Sharon Morris discussed with the Claimant his state of health and told him that she could not allow him to go out on site or to do any manual work, but that he could supervise the remedial team from the office.
42. Stephen Liddiard returned to work on 1 December 2015. Stephen Liddiard asked Sharon Morris why the Claimant was working in the office and she told him that the Claimant had been in hospital and that she had told him not to go home, but that the Claimant had insisted on staying in the office. Stephen Liddiard saw the Claimant and found that he did not look well and said that he should be at home recovering. Stephen Liddiard accepted in cross examination that he had said that he was disappointed that the Claimant had gone back into hospital and that the Claimant's job was not in the office. Stephen Liddiard also said that if the Claimant was not well enough to work he should go home to recover.
43. There was an issue between the parties as to the extent, if any, the Claimant himself was responsible for the work he undertook. Bethany Killey, the Respondent's Operations Administrator, was responsible for the Claimant's diary and throughout the period of the Claimant's employment with the Respondent the Claimant had a great deal of contact with Bethany Killey (Beth Killey) about the work he had been scheduled to undertake.
44. The Claimant as a conscientious employee undertook a significant amount of work for the Respondent involving anti-social hours requiring him to travel long distances and on occasions staying away from home. The Claimant was able to contact the customer to see how much could be carried out with the diary. The Claimant could choose which jobs he was able to do and could ask Beth Killey to contact other teams.

45. However apart from the Claimant's letter to Stephen Liddiard of 15 September 2014 referred to in these Reasons, the documentary evidence does not support a contention that the Claimant complained about excessive demands being made of him. The Claimant despite his unfortunate health problems remained a cheerful and popular member of staff until the end of his employment and presented himself as an employee who was willing, if he was able to, to accommodate the Respondent's requirements.
46. At the meeting with Stephen Liddiard in September 2015 the Claimant did not raise health issues and said that he could earn £230 a day working in London and that he wanted more if he was to continue working for the Respondent.
47. The Tribunal found it unfortunate that the Respondent had not provided the Claimant with any training for the role involved in his promotion for the position of Service and Maintenance Manager. The role involved a significant amount of paperwork and in circumstances where the Claimant was not always on top of the paperwork generated in his role as a Supervisor, such as the submission of timesheets, we consider that the Claimant should have been provided with training and with a suitable period in which to settle into his role.
48. On 23 December 2015 Stephen Liddiard emailed the Claimant, pages 492-493 with a job list of current situations. Stephen Liddiard was chasing the Claimant for an update. The list was triggered by a concern which Stephen Liddiard had raised with the Claimant, namely that matters needed to be properly organised and that the Respondent was letting many clients down.
49. On 23 December 2015 the Claimant returned the job list to Stephen Liddiard pages 492 to 493, with his comments on their current status and what he intended to do in relation to each of them. Thus by way of example in relation to an item "Kings College Hospital", the Claimant indicated *'Awaiting Tender form in New Year'*.
50. The Claimant was not at work over the Christmas 2015 period and he returned to work in the new year 2016. On 9 January 2016 the Respondent hosted its Christmas party which was attended by the Claimant and his partner, Amy. There was an incident at the party involving the Claimant and Beth Killey, involving an encounter apparently of an intimate nature between them. The Claimant himself accepted that there had been an incident involving a fumble between himself and Beth Killey. The Tribunal does not consider it necessary to determine the precise nature of the incident, but whatever did take place it jeopardised the Claimant's relationship with his partner, Amy.

51. The Claimant did not attend work on Monday, 11 January 2016 and on the following day, 12 January 2016 Stephen Liddiard was unable to make contact with the Claimant who explained that his telephone was broken.
52. On 13 January 2016 there was a meeting between the Claimant and Stephen Liddiard. There was a conflict of evidence about what had taken place at the meeting. The Tribunal bore in mind that the meeting had taken place against the background of the absence of the Claimant from work on Monday, 11 January and Tuesday, 12 January 2016. The Claimant alleged that at the meeting he had raised his health issues and the fact that he had been overloaded with work. Subsequent emails which passed between the Claimant and Stephen Liddiard did not support the Claimant's account that he had raised health issues. Both parties agreed that Stephen Liddiard said "*this just isn't working*". It was common ground that Stephen Liddiard informed the Claimant that he would be removing the Claimant's supervisory functions from him and that the Respondent would take over customer contact as previously.
53. The Tribunal did hear some evidence about the Claimant's failings with organisation. On 5 November 2015 Stephen Liddiard emailed the Claimant about concerns, page 481, particularly in relation to the client, Barclaycard. In his evidence to the Tribunal Stephen Liddiard said that his complaint was that before the Claimant had gone on holiday to Las Vegas he had left his assistant without a clue of what was going on and had done nothing in preparation in the paperwork for what would be happening while he was on holiday.
54. On 14 January 2016 Stephen Liddiard wrote the following letter to the Claimant, page 494:

Following on from our meeting on Wednesday, 13 January 2016 we have mutually agreed that you will now work as a supervisor, predominantly working on fire damper testing and remedial works. You will be required to carry out the normal duties expected of this position.

This change will come into effect from Monday, 18 January 2016 and your pay will be in line with the other supervisors at £9.52 per hour. Whilst working on fire damper and remedial work this rate will increase by 10% to £10.47 per hour.

55. Although the Tribunal considered that it was unlikely that the Claimant would have mutually agreed to demotion as contended by Stephen Liddiard because of the financial impact, the Claimant did not respond to the letter, or dispute its contents at the time. It may well have been the case that the Claimant was relieved that some of the administrative responsibility had been removed.

56. It was clear that the incident between the Claimant and Beth Killey at the Respondent's Christmas party caused the Claimant significant concern in January 2016, not only because of the effect on his relationship with his partner Amy, who also worked for the Respondent, but also because he had to maintain some contact with Beth Killey who was responsible for his diary.
57. At pages 495-497 of the Tribunal bundle were a number of text messages exchanged between Beth Killey and Amy Simmons (the Claimant's partner) which contained references to the incident between the Claimant and Beth Killey. Amy Simmons had resigned from her employment with the Respondent, apparently during the second week of January 2016.
58. Stephen Liddiard had separate meetings with both Beth Killey and Amy Simmons about the incident at the Christmas party and Beth Killey accepted that it was very embarrassing for her because everyone in the company had heard what had happened, but that she wanted to remain working for the Respondent.
59. On 21 January the Claimant emailed Heather Ingram of payroll about his wages pointing out that the deduction in his hourly rate had not come into effect until 18 January 2016 and that his wages had been wrongly calculated.
60. On 25 January 2016 the Claimant sent the following email to Stephen Liddiard, page 503. The email included the following:

Sorry I didn't realise I had to be there at 4pm today otherwise would have been, will make sure I'm there tomorrow at 4pm.

Will get photos over to you with regards to fire collars on fume extract.

Will find emails sent to Alan Brooks and forward them on.

I think it might be best if you redirect my emails to either yourself or Operations after tomorrow please and if you need any questions answering then yourself or Alice ring me because then you have full access to where I was a few weeks ago.

I hope you can try to understand that after I have completely messed up my home life recently I am trying to start and sort this out. I cannot do this all the time, I am having to forward on emails and reply to clients. I would like to just concentrate on doing the work out on site please.

If the office need me then they can ring me and if I don't answer

then I will get back to them asap but I don't want contact with Beth at all, if this jeopardises my job then I'm sorry but I can do my job if work week, job sheets and RAMS get sent to Ryan email and all the paperwork and materials where I will drop off/pick up.

I know you probably don't want to know but Amy is trying her best to give me another chance and I do not want to mess this up again so if possible I just would like to be treated like one of the lads that lives miles away.

I am sorry that Amersham slipped my mind but everything else is where it should be now up to date with Alice.

Will phone in damper size for Worple Road on Wednesday after I've been to site.

Thanks.

61. The Tribunal did not consider that the Claimant's email reflected a situation in which the Claimant had been unhappy about his demotion and that his references to concentrate on doing the work out on site and that he would like to be treated like one of the lads who lives miles away, supported Stephen Liddiard's evidence that at the meeting on 13 January 2016 the Claimant appeared pleased that the administration aspects of his job had been removed. We did not consider that the Claimant's email was consistent with a situation in which the Claimant had challenged Stephen Liddiard's decision to demote the Claimant back to his previous role.
62. On the same day there was further exchanges of emails between the Claimant and Stephen Liddiard about a number of jobs, pages 503-505.
63. On 26 January 2016 Stephen Liddiard emailed the Claimant in reply to the Claimant's email of 25 January 2016 quoted above. Stephen Liddiard's email, page 506, included the following:

Albeit I understand that you have the issues in your personal life. This cannot affect how you work and it is something that you have to deal with as everyone else has to. I will not redirect emails and I will need you to pass email information on if it is relevant.

With regards to treating you the same as all the other supervisors this is what I said we will do and it is how we are trying to go forward at present. The problem is you are not taking calls, which the others do, but you are resorting to emails which leaves us in the same unacceptable situation. Emails are fine if there is no conversation required but at times

we do need to talk to you as we do to the others. With regards to not dealing with Beth this is not going to happen. As I explained to you before Beth has a job to do as we all have and there will be times that you need to talk and communicate with her. I am not prepared to have a go between because that is unfair and unreasonable to put someone in that position. To have Ryan receive and issue all the paperwork and deal with the materials is like having him doing the Supervisor's role which is your role so this is not going to happen.

From a personal point of view I understand that you are trying to put things right with Amy and I wish you well but the reason you are where you are is because of your own doing and it is for you to deal with. I believe we can go forwards from here but we have to do it the proper way.

64. On 27 January 2016 the Claimant asked Stephen Liddiard what was going to be done about the situation and Stephen Liddiard stated that there was nothing which he could do. The Claimant then replied that in which case he would have no option other than to resign. Stephen Liddiard told the Claimant that there were lots of other options and reminded him that he was part of a team and that *"we could sort things out"*. Stephen Liddiard also said the Claimant rarely needed to come into the office whereas Beth Killey had to do so every working day. There was also a discussion about Ryan Gray's future, who had been employed to assist the Claimant. Subsequently Ryan Gray was employed in another company in the Group.
65. In his witness statement the Claimant made no reference to his email to Stephen Liddiard of 25 January 2016, page 503, which requested that he should have no contact with Beth Killey and that he wanted to be treated like one of the lads. The Claimant contended that he decided he had no option but to resign after he had reflected how he had been treated and in the knowledge that nothing would change and that he would still be working long hours doing physical work but this time for less pay.
66. On 29 January 2016 the Claimant sent the following letter of resignation to Stephen Liddiard and Sharon Morris, Financial Controller:

Please accept this letter as notice of my resignation from the position of Site Supervisor at Systems Hygienics.

As per the terms of my employment contract, I will continue to work for the company for the next week completing my employment on 05/02/2016.

I have enjoyed being part of the team and I am thankful for the opportunities you have given me during my time here. If there are any areas in particular you would like me to focus on during

my notice period, please let me know.

67. On the same day as he handed in his notice of resignation, 29 January 2016, the Claimant incorporated a company Addems Air Limited. In a 'LinkedIn profile', the Claimant, page 356, described himself as the following:

Director of Addems Air Ltd who tender and specialise in ventilation, installation jobs nationwide.

"We also provide and carry out full service works, ventilation systems that include damper testing and remedial works, ductwork modifications, ductwork cleaning, AHU maintenance, commissioning and much more.

Working Time Regulations

68. A significant amount of the Tribunal hearing focused on the Claimant's hours of work and a significant amount of the documentation contained in the four lever arch files comprising the Tribunal bundle contained tracker records evidencing time, ignition on and off and locations of jobs. The tracker records revealed that during the period of the Claimant's employment with the Respondent, he had worked less hours than the total amount of hours claimed by him on his timesheets. There were discrepancies between the Claimant's timesheets and the tracker records.
69. Some of the discrepancies were explained by the fact that the Respondent's operatives completed timesheets according to the practice "job and knock" which involved charging for a full day or night shift if the work was undertaken quickly.
70. In cross-examination it was put to the Claimant that his schedule of hours worked, page 320 which was completed by reference to timesheets did not actually record the hours worked and the Claimant replied "*not fully, no*". Further in cross-examination when it was put to the Claimant that he knew the records did not record the time he worked the Claimant replied:

I would have to agree with you.

71. The Claimant was cross-examined at length about his timesheets and the documentary evidence in the form of the tracker records. There were occasions when the Claimant's timesheets were signed off when the entries in the timesheets were not reflected in the relevant tracker record.
72. During his evidence, the Claimant was taken through a number of examples where the hours claimed by him were not reflected in the relevant tracker records. The Tribunal will only refer to a sample of

occasions where there were discrepancies or anomalies between the hours claimed by the Claimant and the tracker records. The Tribunal heard evidence of a number of other occasions, which were also referred to at length by Counsel in their submissions to the Tribunal.

73. On 27 April 2015, the records revealed that the Claimant was on site at the Princess Royal Hospital for under two hours when he claimed nine hours double time. The Claimant alleged that the documentary evidence had been altered or doctored by the Respondent. The Claimant claimed 9.5 hours on Sunday 27 April 2014. However the tracker records revealed that he had spent 0 hours on site.
74. On Tuesday, 27 May 2014 the Claimant claimed he had worked for a full day but it was put to the Claimant that he had spent one hour at the Westfield site and had then returned for three hours on the following day. The Claimant replied that his answer was that Mr Liddiard had called him to go to another site and it was put to him that it was a nice explanation but not true.
75. The Claimant had claimed 8 hours for work undertaken at Heathrow on 29 May 2014, page 253, but the tracker record revealed that he had been at Heathrow for 3 hours 13 minutes at Heathrow and not 8 hours, page 20 of the A3 spreadsheet tracker record. The Claimant replied in cross examination that there was not obviously a reason, and added 'job and knock'.
76. It was put to the Claimant that on Sunday 27 September 2013 the records, page 93 of the tracker spreadsheet, showed that no work had been undertaken but the Claimant had claimed four hours double time. The Claimant agreed that nothing had been shown and added:

you have doctored it.

77. Stephen Liddiard's witness statement exhibited an analysis of the schedule of hours worked against the tracker information. Stephen Liddiard also checked sub-contractors' invoices against tracker information and that when working with the Claimant the sub-contractor did not work for a full day, paragraph 159 of his witness statement.
78. The Tribunal has referred to examples of hours claimed when either no work was undertaken by the Claimant or he worked less than the hours claimed. There were other examples. In making allowances for the job and knock practice and the fact that on occasions timesheets were signed off for time which was not reflected in the tracker records, the Tribunal was unable to place reliance on the Claimant's case that during the period of his employment on Stephen Liddiard's own analysis of the tracker records, which was not essentially challenged, he had worked a total of 5,155.25 hours. The information from the tracker records revealed that the

Claimant had worked 3,205.75 hours.

79. The Tribunal considered that the Claimant's credibility as a witness had been very significantly undermined by the discrepancies between hours claimed by him and the tracker records. Further we considered that the Claimant's reaction to the sample tracker entry of an occasion when he had claimed for work on a day no work had been undertaken, namely that it must have been doctored, further undermined his credibility. This was a very serious allegation to level against the Respondent and in our judgment reflected a reaction on the part of the Claimant to endeavour to discredit the Respondent by a 'knee jerk' unsustainable explanation when confronted with evidence we considered was incontrovertible.
80. The Claimant claimed wages for 3 February 2016, during his notice period. It is common ground that the Claimant was not paid for that day but it was the Respondent's case that the Claimant refused to undertake work. The Claimant had received an email on 3 February 2016 page 515 stating that a job had fallen through and as there was nothing else both the Claimant and Ryan Gray would be having an office day. Subsequently the Claimant was asked to go to Worple Road which he refused to do because he was on nights. Ryan Gray was paid for that day.
81. There was an issue as the degree of control the Claimant had in relation to the work he undertook. The Tribunal found that the tracker records did not support the Claimant's case on the extent of the work he claimed he had undertaken during the course of his employment with the Respondent. We found that the Claimant worked hard and that there were occasions he had to travel considerable distances as evidenced by the tracker records and accordingly be required to stay overnight. We accepted the evidence of Stephen Liddiard that he could use subcontractors. There was a team in the north which was a resource available to the Respondent.
82. The Claimant was required to work his contractual hours and according to Stephen Liddiard no one was under any pressure to do overtime at all. Having regard to the distances covered by the Claimant we concluded that the Claimant must have had some degree of control over the work he was able to undertake because he would have to factor in the travel time from his home in Eastbourne to the site involved and whether the work could be feasibly carried out with the travel time involved. Had it been the case that the Respondent had made unreasonable demands on the Claimant we were driven to the conclusion that the Claimant would have raised this with Stephen Liddiard.
83. The Tribunal noted a number of emails which in our judgment evidenced the fact that the Claimant had some degree of control over the work he undertook. Thus there was the following exchange of emails with Stephen

Liddiard on 16 September 2014, page 392:

Hi Steve

Did you want me to carry out the work or are you going to get someone else to do it?

Ben

Is this something you would want to do.

84. There were other emails between the Claimant and Stephen Liddiard, in which Stephen Liddiard enquired if the Claimant could do certain dates for work to be undertaken, pages 416, 426, 427 and 432.
85. After his demotion in January 2016 the Claimant did not complain to Stephen Liddiard about his workload. In his email of 25 January 2016 to Stephen Liddiard, page 510, the Claimant requested to be *treated like one of the lads that lives miles away*. We considered that the Claimant's email was wholly inconsistent with a situation in which the Claimant had been required to undertake an unreasonable workload.
86. The Claimant accepted that the Respondent operated a system of office days or change over days, which were days when an employee such as the Claimant was paid but did not work. At paragraph 11 of his witness statement the Claimant alleged that he had worked on 24 April 2014 at Westfield, and at night at Terminal 1 at Heathrow, followed by all day Friday 25 April in the office. Friday 25 April was a change over day and the Claimant only worked at the Respondent's office on that day from 15.50 to 16.52, and not all day, page 14 of the Tracker records.
87. We found that the Claimant himself was responsible for organising his rest breaks. The Claimant's work took him mainly on site and in his role as supervisor and subsequently Service and Maintenance Manager, the Claimant clearly had the authority to organise his rest breaks. Stephen Liddiard was not on site to ensure that he took them. The Claimant throughout the period of his employment with the Respondent did not raise any complaint that he had been denied a rest break.
88. The Claimant's claim form was received by the Tribunal on 3 June 2016 and taking into account the ACAS extension it was accepted that any breach of the Working Time Regulations within the statutory time frame would not go back further than 14 January 2016.
89. In relation to Regulation 11 of the 1998 Regulations requiring the entitlement to an uninterrupted rest period of not less than 24 hours in each seven day period, the tracker records revealed that there were periods when there were breaches of Regulation 11. It was the Claimant's case that the latest breach occurred on 18 to 19 January 2016 when according to the Claimant's time sheet, page 165 he was working at the

Westfield site (International Way London E20 1YY) page 108 of the tracker records.

Submissions

90. At the end of the Hearing the Tribunal directed that the parties' representatives should provide written submissions. Both Ms Stroud and Mr Mitchell provided written submissions, which the Tribunal considered in Chambers. The Tribunal is very grateful to both Counsel for their well structured and helpful submissions and their analysis of the relevant law.

The Law

91. The Tribunal considered the following authorities:

- **Grange v Abellio London Limited [2017] ICR113**
- **Miles v Linkage Community Trust Limited [2008] IOLR602**
- **Scottish Ambulance Service v Truslove & Another, EAT, 0028/11**
- **Carter v Prestige Nursing Limited, EAT, 0014/12**
- **Ajay I v Aitch Care Homes (London) Limited [2012] ICR22**

92. The Claimant's Tribunal claims involve disability discrimination, claims under the Working Time Regulations, constructive unfair dismissal and unauthorised deduction of wages.

Disability Discrimination

93. The Claimant was a person with a disability by reason of a physical impairment, namely Crohn's disease.

94. Section 15 of the Equality Act 2010 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,

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

95. Section 20 of the 2010 Act imposes a duty upon the Respondent as the employer of the Claimant, a disabled person to make reasonable adjustments for him. Section 20(2) of the Act provides:

(2) The duty comprises the following three requirements:

(3) The first requirement is the requirement where a provision, criterion or practice of A's puts a disabled person at

substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take some steps as it is reasonable to have to take to avoid the disadvantage.

96. The Claimant alleged that the Respondent had failed to make a reasonable adjustment for him by making him work excessively long hours and/or working without the support of someone (including driving).

97. Regulation 10 of the Working Time Regulations 1998 provides:

10 Daily Rest

(1) A worker is entitled to a rest period of not less than eleven consecutive hours in each twenty four hour period during which he works for his employer.

98. Regulation 11 of the Working Time Regulations provides:

Weekly Rest Period

(1) Subject to paragraph (2), a worker is entitled to an uninterrupted rest period of not less than twenty four hours in each seven day period during which he works for his employer.

(2) If his employer so determines, a worker shall be entitled to either –

(a) Two uninterrupted rest periods each of not less than twenty four hours in each fourteen day period during which he works for his employer; or

(b) One uninterrupted rest period of not less than forty eight hours in each such fourteen day period, in place of the entitlement provided for in paragraph (1).

99. The Respondent contended that the Claimant had not pleaded any request for a rest period, and at paragraph 172 of her submissions to the Tribunal Ms Stroud conceded that the latest incidents of the Claimant's seven day working week was 12-18 December 2015 and that therefore it followed this head of claim fell outside the statutory time limit and was therefore out of time. Accordingly Ms Stroud submitted that time should be extended on the grounds that it was not reasonably practicable to have presented such a complaint earlier.

100. Regulation 30(2) of the Working Time Regulations 1998 sets out time limits for the bringing of complaints under the Working Regulations and provides that an Employment Tribunal shall not consider a complaint

unless it has been presented before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted. Regulation 30(2)(b) provides a discretion to the Tribunal to extend time namely within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to have been presented before the end of the period of three months.

Detriment on Grounds of a Contravention of the Working Time Regulations

101. Section 45A of the Employment Rights Act 1996 provides:

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

(a) Refused (or proposed to refuse) to comply with the requirement which the employer posed (or proposed to impose) in contravention of the Working Time Regulations 1998,

(b) Refused (or proposed to refuse) to forego a right conferred on him by those Regulations.

102. The Claimant alleged that detriments involved Stephen Liddiard's cancellation of his non-physical duties upon his return from leave in each December 2015 and the comments he made at the time, Stephen Liddiard's alleged obvious irritation with the Claimant when he refused to work certain shift patterns and his decision to demote the Claimant on 13 January 2016.

Constructive Unfair Dismissal

103. Section 95(1)(c) of the Employment Rights Act 1996 provides:

(1) For the purposes of this part an employee is dismissed by his employer if (...only if) –

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

104. To found a complaint of constructive unfair dismissal the Claimant has to show that his resignation has been caused or justified by a fundamental or repudiatory breach of his contract of employment by the Respondent

employer, namely a breach which goes to the very root of the contract between them; in other words conduct on the part of the employer which evinces the employer treating the contract of employment as discharged.

105. The Claimant relied upon the following breaches of his contract of employment, namely his demotion, requiring him to work shift patterns which were injurious to his health, requiring him to work shifts without adequate support, Stephen Liddiard's decision to overturn the arrangement reached with Sharon Morris for the Claimant to work on non-physical duties, and the comments Stephen Liddiard made at the time.

Automatic Unfair Dismissal

106. Section 101A of the Employment Rights Act 1996 provides:

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

- (a) Refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations 1998.***

Conclusions

107. The Tribunal reached its conclusions having regard to the evidence, to the submissions of Counsel on behalf of their respective clients and to the relevant law.

Disability Discrimination

108. In the circumstances of this case, there was no medical evidence before the Tribunal to support a contention that the Claimant's working patterns and his job role with the Respondent was responsible for a deterioration in the Claimant's health or that it had impacted upon the Claimant's ability to undertake the sometimes demanding requirements of his role. Although the Tribunal had regard to the Claimant's impact statement, pages 115 to 120, the Tribunal remarked at the Hearing about the absence of medical evidence to support the Claimant's case. We accepted the submission of Mr Mitchell on behalf of the Respondent that the Claimant had failed to establish that a substantial disadvantage was caused to him, and had chosen not to present any medical evidence which linked his working hours with the purported deterioration or exacerbation of his condition.

109. The medical evidence available before the Tribunal included the letter

from the Claimant's GP in response to Stephen Liddiard's enquiry about the Claimant's condition, when he was first informed by the Claimant in June 2014 that he had Crohn's disease. The reply from the Claimant's GP dated 18 June 2014 stated that he was pretty confident that the Claimant's condition and medication should not have an impact on his work duties nor would he expect any side effects to put him in danger whilst at work. The letter continued by stating that obviously the Claimant needed to report any difficulties he had directly to him.

110. There was no evidence before the Tribunal that the Claimant himself had ever reported any difficulties to his GP, and the Claimant's GP records were not made available to the Tribunal. The Claimant himself informed Stephen Liddiard that he didn't need sleep and that he always got by with very little sleep indeed.
111. It was Stephen Liddiard himself who considered that the Claimant should have another operative working with him and the Claimant identified Ryan Gray who started working for the Respondent in September 2014.
112. The discharge note from hospital after the Claimant had been admitted on 12 November 2015 recorded a six months' history of mild abdominal pain and stated that the consultant gastroenterologist, Dr Ratnarajah had advised the Claimant to stop smoking and eat a healthy well balanced diet.
113. In a letter to the Claimant's GP, Dr Southwood, dated 7 December 2015 page 151, Dr Ratnarajah did not refer to work pressures, but referred to the Claimant's smoking and stated that the Claimant did not drink any alcohol. The Claimant may have misled his doctors about his drinking, because there was evidence before the Tribunal which was not challenged by the Claimant that he did drink alcohol and drank heavily on occasions. The Claimant was hardworking and very popular amongst his fellow employees and wholly understandably wanted to relax and enjoy himself with his work colleagues on occasions.
114. There was an absence of any documentary evidence supporting a contention that the Claimant's work had a detrimental impact on his health, and had it been the case, we were driven to the conclusion that the Claimant would have reported this to his GP and to his Consultant.
115. The Claimant was admitted to hospital on 14 February 2016 and was not discharged until 8 March 2016.
116. The Tribunal noted that even at the end of his employment, the Claimant in his email of 25 January 2016 stated that if possible he would just like to be treated like one of the lads. Had it been the case that work pressures, had impacted on his health as alleged, we consider that the Claimant would inevitably have raised such issues in his emails to Stephen Liddiard

and would have raised them with his GP. We approached the Claimant's impact statement with caution having regard to our findings relating to his credibility and to the absence of any supporting medical evidence.

117. In the absence of any documentary evidence or supporting medical evidence, the Tribunal considered that a finding that the Claimant had suffered a substantial disadvantage because of his work and his working patterns, which have involved a speculative leap on it's part.
118. The Tribunal concluded that the Claimant's demotion from his role as Service and Maintenance Manager on 13 January 2016 occurred as a result of the fact that the Claimant had been behind with jobs and the fact that the Claimant had not attended work on Monday 11 January 2016 and that Stephen Liddiard had been unable to make contact with the Claimant on the following day, 12 January 2016. The Claimant himself accepted that administration was not his strong point, and the Tribunal has commented about the absence of training for the Claimant.
119. The Tribunal concluded that the Claimant was demoted because Stephen Liddiard considered that the organisation aspects of his role should be removed.
120. The Claimant did not respond to Stephen Liddiard's email of 14 January 2016 or as we found on the evidence express any dissatisfaction or objection to his demotion. Indeed we considered that the Claimant's email of 25 January 2016 to Stephen Liddiard, page 503, after the Claimant had reverted to the role of Supervisor, did not reflect any dissatisfaction with the position, rather the reverse.
121. Although clearly, a demotion can amount to unfavourable treatment, the Tribunal concluded that the Claimant's treatment involving his demotion had not arisen in consequence of his disability, but because he lacked the organisational ability, to undertake all the requirements of the position of Service and Maintenance Manager.
122. The Tribunal also bore in mind the fact that the Claimant's promotion had followed from a meeting between the Claimant and Stephen Liddiard when the Claimant stated that he could earn £230 a day working in London and what was he going to do about it. Again, the Tribunal did not consider that such an approach on the part of the Claimant to his employer, reflected a situation where the Claimant's work activities were affecting his health.
123. The Claimant's complaints of unlawful disability discrimination are not well founded and are accordingly dismissed.

Working Time

124. On the evidence there was a very significant discrepancy between the hours which the Claimant alleged that he had worked and the hours the Respondent alleged the Claimant had worked based upon the tracker records, involving a difference of 1,949.5 hours. The Tribunal did not find the Claimant a credible witness in relation to the hours he claimed he had worked and the Tribunal has referred to a few examples of anomalies between hours claimed and hours actually worked. The Tribunal is grateful to both Counsel for their very detailed analyses of the tracker records, the Claimant's own evidence, and the conclusions the Tribunal should draw from both the documentary and from the verbal evidence in relation to the working time issues.

125. The Tribunal concluded that throughout the period of his employment the Claimant had not objected to his working patterns, and even when towards the end of his employment with the Respondent, Stephen Liddiard in his email to the Claimant of 23 December 2015, had asked for an update on certain jobs, the Claimant did not maintain that his work commitments were unreasonable or that they were impossible to achieve. We found there was no evidence to support any contention that the Claimant was unable to have any choice in deciding the extent of the work he was able to do. The Tribunal accepted the evidence of Stephen Liddiard, and paragraph 68 of his witness statement included the following:

The work would normally be arranged and carried over a four to six week period depending upon the extent of the work and materials required. BA would then have the choice of who would carry out the work from the teams we had, including himself and RG, or to use one of our sub-contractors. BA knew that he could choose to do however much of this work that he wanted and knew that the more he did the more he would get paid. BA always chose to do as much as possible, including night work, to get paid as much as possible. There was never a need for BA to do any more than his contracted hours nor was there a need to do any overtime.

126. The Tribunal on the evidence, found that understandably, the Claimant prioritised earning as much money as possible and that it was his choice to work the hours he worked for financial reasons. As Mr Mitchell pointed out in his submissions the Claimant accepted that there was not a single email, letter, grievance, complaint where he had raised the fact that he had been denied a rest break.

127. There was a time jurisdiction issue in relation to the Claimant's complaints under the Working Time Regulations. The Claimant's claim form was received by the Tribunal on 3 June 2016. The Respondent contended that the Claimant's complaints can only go back to 14 January 2016. It was contended on behalf of the Claimant that the last alleged breach took

place on 18-19 January 2016.

128. In relation to the Claimant's claims about rest periods of at least twenty four hours in any seven day period, it was accepted that the last occasion of a seven day working week was 12-18 December 2015 and that accordingly a claim in relation to such a period had been presented outside the primary time limit of three months.
129. The issue of reasonable practicability, involved in the discretion to extend time under Regulation 30(2)(b) of the 1998 Regulations has been judicially defined as meaning reasonably feasible.
130. In her submissions Ms Stroud submitted that the Tribunal should extend time taking into account the clear evidence of the severity of the Claimant's hours and his unhappiness with the hours he was working.
131. In relation to the Claimant's claim under Regulation 11 of the 1998 Regulations, Ms Stroud submitted that the Claimant had been admitted to hospital just nine days after his last day with the Respondent and had been transferred on 8 March 2016 to St Thomas's Hospital.
132. The Tribunal noted that at an informal HR meeting with Jeanette Peters on 6 April 2016, when asked whether he was raising a grievance the Claimant replied "*I want to claim constructive dismissal*", page 348. By this stage, according to paragraph 82 of his witness statement the Claimant had spoken to ACAS and the CAB. In circumstances where the Claimant had clearly formed a view about making a Tribunal claim, we concluded that it would have been reasonably practicable or feasible for the Claimant to have presented his complaints relating to the Working Time Regulations before the expiry of the three month time limit beginning with the date on which it is alleged that the exercise of the right should have been permitted.
133. The Tribunal accepted the submission of Ms Stroud that the Respondent should proactively have ensured that the Claimant's working arrangements permitted him to take rest periods of eleven consecutive hours in any twenty four hour period and rest periods of at least twenty four hours in any seven day period. Although we found that the Claimant's credibility as a witness had been undermined, by the evidence in the tracker records and by the absence of any documentary evidence evidencing the Claimant's alleged unhappiness about his working patterns, and in particular the Claimant's assertion that the records had been "*doctored*" where they did not reflect the Claimant's own case, there were breaches of the Claimant's right to daily rests and to weekly rest periods.
134. The Tribunal had regard to **Grange v Abellio London Limited [2017] ICR287, EAT** and the judgment of Judge Eady QC, in particular at

paragraph 43 of her judgment namely,

I further observe that, in terms of the nature of the right, the Court saw no distinction between a worker's entitlement to an employer's obligation in short to ensure maximum hours of working time. Given that guidance, I consider it clear the directive entitlement to a rest break is intended to be actively respected by employers. It is required not merely that employers permit the taking of rest breaks (in accordance with directive provision) but – allowing that workers cannot be forced to take rest breaks – that they proactively ensure working arrangements allowing for workers to take those breaks.

135. In circumstances where it appeared from the documentary evidence that there was a breach of Regulation 10 of the 1998 Regulations in respect of 18-19 January 2016, the Tribunal found the Claimant's complaint in relation to such a period well founded.
136. In relation to the Claimant's complaint that he resigned because he was being subjected to a detriment for having asserted his rights under the Working Time Regulations and that accordingly he had been unfairly dismissed pursuant to Sections 101A and 104 of the Employment Rights Act 1996 we did not conclude that the Respondent had imposed a requirement for the Claimant to work shifts in breach of the Working Time Regulations throughout his employment.
137. We have already commented upon the absence of any proactive steps undertaken by the Respondent to ensure compliance with any requirements of the 1998 Regulations, but the Claimant never asserted his rights under the Working Time Regulations to Stephen Liddiard or to any individual within the Respondent company, and as we have found it was very largely left to him as to how much work he undertook in addition to his contracted hours.
138. The Tribunal concluded that the Claimant's demotion, involving a pay cut, was as a result of the Claimant's inability to perform the organisational and administrative aspects of his role. The Tribunal on the evidence, accepted the submission of Mr Mitchell on behalf of the Respondent that there was no discernible or causal link between the conduct complained of and the alleged detriments complained of by the Claimant.
139. Although the Tribunal considered that the Claimant would have been unlikely to agree to a demotion, we found that the Claimant did not subsequently complain about it during the course of his employment and as Stephen Liddiard alleged when he told the Claimant that the Respondent would take over customer contact as before the Claimant replied "I wanted to talk to you about exactly the same thing." The

Claimant's email of ? January 2016, in our judgment, was wholly inconsistent with the situation in which the Claimant was unhappy about his demotion.

140. It is the unanimous judgment of the Tribunal that the Claimant was not automatically unfairly dismissed by the Respondent.

Constructive Dismissal

141. The Claimant contended that he had resigned as the result of repudiatory breaches of contract involving his demotion and requiring him to work shift patterns injurious to his health and requiring him to work shifts without adequate support.

142. The Tribunal concluded that the Claimant's demotion would have involved a breach of his contract of employment, if it had been imposed upon him and the Claimant had accepted such breach by his resignation. However the Tribunal found that the Claimant did not dispute or resist his demotion and that his conduct thereafter, during the remaining employment relationship with the Respondent, evidenced that he had acquiesced in the situation.

143. The Claimant's subsequent email to Stephen Liddiard, referred to in these Reasons, was inconsistent with a situation in which the Claimant was unhappy about his demotion, rather than the reverse.

144. In his email the Claimant had stated that he had completely messed up his home life and that he would like to just concentrate on doing the work out on site. The Claimant also stated that he didn't want any contact with Beth Killey and that he was sorry if that should jeopardise his job.

145. The Claimant, as we found, had never raised issues concerning his work having a detrimental impact on his health. When the Claimant asked Stephen Liddiard on 27 January 2016 what was going to be done about the situation, which could only have referred to Beth Killey, the Claimant in response to Stephen Liddiard stating that there was nothing he could do the Claimant stated that in that case he would have no option other than to resign.

146. The Tribunal concluded that the reason the Claimant resigned was because, as he had stated in his email of 25 January 2017, he had messed up his home life and did not want any contact with Beth Killey. Had it been the case, as the Claimant has subsequently alleged, he had resigned in response to the Respondent's conduct involving his working patterns, or his unhappiness about his resignation we consider that it would have been inconceivable for the Claimant not to have said so.

147. The Claimant's letter of resignation, provided no indication or hint of the

Claimant's unhappiness with his role or with his working conditions and expressly stated that he had enjoyed being part of the team and was thankful for the opportunities he had been given during his time with the Respondent. Even making allowances for courtesy and an understandable wish on the part of the Claimant not to leave on acrimonious terms, the Tribunal considered that the Claimant would have referred to his subsequent allegations had they played a part or any part in his decision to resign.

148. We also consider it too much of a coincidence that the Claimant on the day of his resignation 29 January 2016 incorporated a company Addems Air Limited and we were driven to the conclusion that the Claimant's proposed involvement with the company must have played a significant part in his decision to resign from the Respondent in addition to his issues with Beth Killey.
149. The Tribunal concluded that the Claimant did not resign from his employment with the Respondent in consequence of a repudiatory breach of his contract of employment on the part of the Respondent. Accordingly it is the unanimous judgment of the Tribunal that the Claimant was not dismissed within the meaning of Section 95(1)(c) of the Employment Rights Act 1996 and that accordingly the Claimant was not constructively unfairly dismissed by the Respondent.

Unauthorised Deductions from Pay

150. The Claimant was not paid for a day's work on 3 February 2016 during his notice period. There was no issue that a project which the Claimant had been scheduled along with Ryan Gray had been cancelled and the Claimant was sent the following email on 3 February at 8.59:

Hi Ben

Unfortunately we don't have anything else so you and Ryan will be having an office day."

151. Stephen Liddiard alleged that he had requested the Claimant to go to Warple Road where the scheduled job had fallen through, and that the Claimant had said that he had been on nights and would not do this. There was an exchange of emails between the Claimant and Stephen Liddiard pages 522-523 between 23 February 2016 and 24 February 2016. The Claimant's email of 23 February 2016 included the following:

"You've now to my amazement apparently changed your mind and said that I refused to work on the Wednesday at Warple Road when I had never been asked to work there and the last I

heard about it was on the Monday when you asked me if I had heard from Jamie at Baltimore Group about the size of the damper so I ask you, how could I install a VCD that hadn't even been ordered.

I also messaged Alice in Operations first thing Wednesday morning to ask her about work for that night (as we were working nights) and her response was Steve said you would have to take today as an office day.

I have later found out that Ryan had been paid but I haven't so I'm guessing this is a personal vendetta against me for quitting in guessing.

I told you for when I handed my notice in that this wasn't personal and even carried out a remedial service for you that went above and beyond my job but still you chose to underpay me."

152. In circumstances where the Claimant as instructed had worked an office day on 3 February 2016 as had Ryan Gray who had been paid the Tribunal concluded that the Claimant's claim to be paid for his work on 3 February 2016 was well founded and accordingly the Respondent is ordered to pay the Claimant his wages due for that day.
153. The Tribunal considered that this was an unfortunate case. We felt very considerable sympathy for the Claimant whom we found had very bravely endeavoured to cope with his condition, and who had since the ending of his employment with the Respondent become seriously ill. The Claimant was an impressively hard worker and he was clearly a very popular member of the Respondent's staff.
154. A remedy hearing will be listed unless the parties inform the Tribunal in writing no later than 1 December 2017 that they have agreed remedy for the Claimant.

Employment Judge Hall-Smith

Date: 14 November 2017