"Van De Vechte was an expert on everything and he told me that they were giving me the wrong advice. He came to me to tell me to ignore them as not all their advice was correct".

"They were bullying me by giving me a bad reputation. I was humiliated by the effect of being seen to be unprofessional".

"The Camp 2 bullies were manipulative and gave me wrong advice but when they told me things about Susana, they were absolutely correct".

In his witness statement, the Claimant stated:-

"After four or five weeks I had found out that the Camp Two members, who were supposed to shadow me to improve the quality of my work, gave me on purpose wrong answers to my questions. They were obviously trying to manipulate me to make errors in replies to customers. I also often got very short answers that did not answer my question .....".

In his evidence to this Tribunal, Mr Dorland has this to say on this matter:-

"I cannot answer specifically Camp 2 gave Bart wrong information to his questions. Bart was sitting in a different location in the office to me so I could not always hear that".

but then, contradicts this by saying:-

"The Camp 2 guys were trying to bully Bart out of the company by giving wrong information to Bart, questions about promotions, they also searched for mistakes made by Bart which they forwarded to the team leader".

In his evidence to the Tribunal, Mr Amrani had this to say on the issue:-

"I recall that Bart claimed I was giving him wrong answers to his questions. In the 5 years I have worked at GVC no one has ever complained about me giving a wrong answer on purpose. I have never intentionally given anyone a wrong answer but it is possible that as a human being I given a wrong answer".

In the course of her evidence to the Tribunal, Ms Martin stated:-

"Mr Van Thienen did complain to me that he was being given incorrect information by the four according to him. What is incorrect information. Was it given intentionally to mislead the customer or give the client a bad picture of Bart or is it a case where different views of giving an answer to a customer are existing. We have procedures with articles on scenarios, if he contacts us asking this question this is the answer, however sometimes not all of the answers are in the scenarios given. The MOSS data base. Not all the questions are found in MOSS".

Having heard the witnesses and taking account of all the evidence I have come to the conclusion that the Claimant's perception that he was intentionally given wrong information and/or wrong answers by Camp 2 members is not correct. I am of the opinion that whilst there may have been one or more occasions when either the Claimant, on asking a third party the same question as had been asked of the Camp 2 member, may have received a different answer/information, or, the MOSS manual provided a different procedure/approach to that supplied by a Camp 2 member, or, that promotional products were said to be ill defined, such a state of affairs does not demonstrative or indeed indicate an intention to mislead on the part of the Camp 2 member concerned. Bearing in mind the pressure of the work environment, the Claimants preponderance to slavishly follow the MOSS manual unlike Camp 2 members, and that individuals have different ways to answer questions (depending on how they are framed in the first place) and resolve issues (depending on their knowledge and experience of products and situations) it is not

that surprising that there could have been a divergence of opinions at times. To this one has to add the fact that there is no independent evidence to support the Claimant's contention that he was being purposefully misled. I have therefore concluded that there was no conduct that could be said to have contravened the provisions of clause 4(1) (a) or (b) of the Bullying Act and that, even if I was wrong in this, the conduct was not persistent for the simple reason that the Claimant on his own evidence stopped asking Camp 2 members anything.

Fourthly, the Claimant alleges that he was bullied by exclusion in the sense that Camp 2 members would not greet him and/or speak to him. Thus, in his evidence to the Tribunal the Claimant stated that:-

> *"On one occasion Amrani and Sabir came to work and greeted everyone but not me, they made a show of it This was bullying by exclusion. I was humiliated, distressed by this".*
>
> *"It was bullying by exclusion that they did not speak to me".*
>
> *"This was about Asnar. One day he talks to me, another not".*

In his evidence to the Tribunal, Mr Van Veen had this to say on the subject:-

> *"There have been times when some people refused to talk to each other or help each other. I recall non speaking terms Bart and Asnar, there have also been times when Amrani was not talking to Susana.*

In his evidence to the Tribunal, Mr Amrani states as follows with reference this issue:-

> *"He (Mr Dorland) apparently agreed that Bart was stubborn and that we should ignore Bart ..... Bart later on went to complain that I ignored him so whatever I do is wrong. What is the correct approach to do as Dorland said to ignore which Bart says is the mature way but when I did this Bart complained I was ignoring him so what is the correct approach for Bart".*
>
> *"As wisely advised by Dorland I ignored Bart but then he went and complained about being ignored".*
>
> *"We probably spoke to each other after 29th July, it is impossible not to speak to each other, we worked together. I never bullied Bart".*
>
> *"I ignored Bart as much as possible unless it was work related and if it was work related, I treated him with kid gloves".*

After considering the evidence given, I have concluded that almost certainly the Camp 2 members did as much as possible within the confines of the working environment and their respective duties to ignore and not speak to the Claimant, a person they clearly did not like or trust, and that the Claimant, who himself admits to trying to keep away from them, did likewise with reference the Camp 2 members. The Bullying Act cannot be interpreted in my view to force employees to engage in social conversation and pleasantries whilst at work when they do not wish to do so. Having said this, I have also concluded that there was conversation between the respective persons with regard to work related matters, such conversation undoubtedly being short and direct and in line with the tension that there was within the team. Other than not being greeted or spoken to socially the Claimant has not alleged any other exclusionary conduct. This being the case I have concluded that there was no conduct persistent or otherwise that could be said to have excluded the Claimant from employees of the Respondent (other than Camp 2 members) or from his work or his environment whilst at work.

Fifthly, the Claimant alleges that Camp 2 members were building a file to use against him. In evidence, the Claimant stated:-

"Amrani showed me that he was building a file against me".

In evidence, Mr Asnar stated that:-

"It is not correct that I kept files on Bart in my computer. Why would I do that?".

"I did not keep anything on Bart. I forwarded these as evidence but I did not keep anything on my PC. This was to show that I tried to help Bart".

There is no evidence to suggest or prove that Mr Ringleberg or Mr Nouri kept any files on the Claimant and therefore there cannot be any basis for a bullying allegation against either of them. With respect to Mr Asnar there is no evidence to support the Claimants assertion that Mr Asnar kept a file on him; what was produced by way of late disclosure in the second witness statement is documentation kept on the Respondents own servers.

In his evidence to the Tribunal, Mr Amrani had this to say on this matter:-

"I don't recall if I was asked to prepare a file on Bart's mistakes but I do remember that I deleted the file when Bart told me this was a breach of privacy and that this had been informed to the Governor of Gibraltar, which I regret now because I had no malicious intention whatsoever. It was purely for improving quality purposes".

"I don't know how long I kept this file. I showed the file to Bart. I did this because he made mistakes and I wanted to improve the quality of his work. I have no recollection of how many mistakes. I don't recall if anyone else was present when I showed the file. It is possible that no one asked me to build up that file".

There is therefore no doubt that Mr Amrani did build a file on the Claimant's mistakes; a course of conduct, which quite frankly I doubt very much was for the purpose of quality control. Having said this, it is interesting to note that whilst the Claimant denies keeping a file on Camp 2 members Mr Van Veen had this to say on the subject:-

"I believe other employees kept records of other employees. Bart kept files on other employees. I remember seeing them on his screen and asking Bart about them. A short conversation ..... I saw a folder on Bart's desk top and as I did, I saw my name on one of the folders and the names of the other team members, as I recall it was all the members including the team manager, Susana. I did not see what was in the files. They could have been empty. I remember asking Bart because I saw my name on the folder so I asked. Bart said I keep track of things, mistakes and errors and other information. I made the statement that I thought this was odd because I had never seen anyone keep folders on team members. Bart replied along the lines, I like to keep things on file and it is also based on earlier experiences".

Having seen and heard the witnesses, I have come to the conclusion that just as Mr Amrani kept a file on the Claimant, the Claimant kept a file on other team members. I have further concluded that in the case of both individuals the files were kept for reasons unconnected with their respective work and with a view of potentially using the contents of those files against the other(s), something which never came to pass. As these files never saw the light of day and where never used against the Claimant or shown to third parties, as far as the evidence shows, such conduct could not be said to be intimidating or abusive or insulting or malicious or unjustified criticism and when viewed objectively would not cause alarm, distress, humiliation or intimidation.

Bullying by Ms Martin

It is the Claimant's position that before the meeting of the 30th January 2018, he had not had any problems at all with regard to Ms Martin but that after that meeting everything had changed and Ms Martin started to bully him with the end result that it caused him to suffer a mental health breakdown. In evidence to this Tribunal, the Claimant stated for example:-

> *"Until the 30th January Susana was nice to me, good to me. She was a good boss to me upto then but horrible to others and became horrible to me after the 30th January".*
>
> and
>
> *"She turned from being a nice person to me to overnight turning a switch and becoming vicious and vindictive an individual to me".*

Whilst the Claimant refers above to the 30th January 2018, as being the turning point in his relationship with Ms Martin it is also the case, as we will see below, that the date of the 6th February is given by the Claimant. Having said this, the Claimant admits that it was not until the 6th April 2018, that he actually complained about Ms Martin. Hence, prior to this date the Claimant had in correspondence said the following about Ms Martin:-

> *"To set record straight, I wish to add here that I personally and all other more mature persons in the team all agree that Susana as a team leader has done a great job to try to settle this situation respectfully and keeping everyone's position in mind. As a team leader she has been acting where it should and been lenient where necessary. That this situation is getting entirely out of hand is definitely not Susana's doing or responsibility".* (Email dated the 29th July 2017).
>
> *"I also had a very good, honest and open (as they always were) meeting with my team leader Susana yesterday ..... I have clearly repeated to my TL that I am urgently looking for another job in the company but that I don't blame her for the situation that exists in the team of which she is as much a victim as me".* (E-mail dated the 8th February 2018).

When these e-mails were put to the Claimant he admitted that he had not told the truth in them and stated in evidence as follows:-

> *"At this time, I was there two and a half months I had heard the stories from Camp 2 about Susana that she was vicious and vindictive, that if Susana does not like you, she will punish/bully you whatever you want to call it, with bad evaluations, sabotage holiday requests and talk badly about you behind your back. So, I decided to always stay on Susana's good side because I saw she was going against Dorland and Camp 2 as I had described".*
>
> *"I was lying to HR at this point. With hindsight I was wrong in not complaining about Susana".*
>
> *"No what I said in this minute is not what I thought. I believed that Susana was vindictive and vicious but I did not want to say that to HR. Susana had been nice to me but not to others. What I said here is not what I genuinely believed".*
>
> *"Until the 30th January Susana was nice to me, good to me. She was a good boss to me upto then but horrible to others and became horrible to me after the 30th January. I did lie to HR to protect my career chances in the company and to protect my team leader".*

This is an admission by the Claimant that not only was he prepared to lie to his employer about Ms Martin but also that he was prepared to keep his objections/criticisms about Ms Martin's behaviour of others and his belief that she was a bully silent and befriend her whilst it suited his purposes. In other words, provided I am left alone everything is all right with me jack.

In support of his bullying allegation the Claimant relies on the following incidents:-

(a) Ms Martin's performance evaluations of the Claimant for the months of January/February 2018;

(b) Ms Martins refusal to authorise the Claimant's leave requests for:-

(i) the period encompassing week 12 (ie the 19th March 2018 onwards); and

(ii) the period encompassing 8th to 15th May 2018.

(c) Ms Martin's feedback on the 8th March 2018; and

(d) a couple of other alleged incidents.

Turning therefore to analyse each one of these incidents in turn.

Bad Evaluations/Performance Cards

Before proceeding to analyse the evidence with regard to the evaluations/performance cards issued with respect to the Claimant it is necessary to touch on the evidence given by other witnesses with reference the allegation made by the Claimant that Ms Martin used bad evaluations/performance cards to bully staff.

In evidence to the Tribunal, Mr Dorland had this to say about bad evaluations:-

"The evaluations by Susana were not done in an honest way. If she did not like you, she will on purpose check for bad e-mails or chats or phone calls in order to give you a worse mark. If she liked you then she would not search for these chats etc but if she disliked you then she would search in order to downgrade you".

"Three team members confirmed to me that if Susana liked you, she would not search for chats or e-mails to make a bad report".

In evidence to the Tribunal, Mr Van Veen stated that:-

"I don't recall people saying to me that if Susana did not like you, she would give you bad evaluations, cause you problems. I don't remember people coming to tell me such a thing".

In evidence to the Tribunal, Mr Asnar stated that:-

"I know of one evaluation which was incorrect and I wrote to her and she contested it. There may have been others but I got tired of it and did not write to her".

In evidence, Mr Amrani stated that:-

"I remember Bart sharing information about his evaluation when he was unhappy about his result. When someone was unhappy with their evaluation team members would speak about it. When there was an evaluation, one would ask how it was, if it was good it was left at that but if it was bad, we would share what the problem was. This was mainly to see if the evaluation was well done by Susana".

It is clear from the above that whilst Mr Dorland supports the Claimant's allegation whole heartedly the other witnesses come no way near doing so. It would indeed be strange if all staff always agreed with their evaluations and/or did not periodically contest their results. It would also be strange if team leaders were always 100% correct with their evaluations. This is not the issue. The issue is whether Ms Martin intentionally, as a means of punishment or persistent unjustified criticism or persistent behaviour which was offensive etc falsified evaluations or gave unjustified valuations. Turning therefore to the evidence in the Claimant's own case.

The quality report for January 2018 provided the Claimant with a score of 70.75%. The feedback on this report was discussed by Ms Martin with the Claimant on the 27th February 2018, minutes being taken of the meeting. In the minutes it is stated that:-

(i) *"Bart was very unhappy with the result and could not believe that Dennis Dorland had a better score".*

(ii) "Bart says that there is a higher work pressure due to the chats. Bart said it would be difficult to solve a case with all the pop up from the chat. Susana gave solutions".

(iii) *"Bart was saying that Susana was given contrary information. Susana asked him to give an example, but Bart could not give examples".*

(iv) "We then went through the cases. Agreed with all the comments of the cases, we went more in details the fatal error cases".

Two things appear to be clear from the contents of this minute, if one where to accept the contents thereof to be accurate; namely that a measure of the Claimant's disapproval resolved around getting a worse score than Mr Dorland, and the problems he was having with the "pop up", rather than being deliberately underscored, and that the Claimant did agree that the comments made with regard to individual cases he had worked on was correct.

In his evidence to the Tribunal the Claimant stated as follows when these minutes were shown to him:-

> *"These notes are a forgery. I did not see these notes until a year after my dismissal during disclosure and I did not agree with the notes at the time. I did not agree but as she would not change it, I said okay I agree and left it at that as I was applying for other jobs in the company. I was very disappointed by this result; I was distressed humiliated alarmed by this. As a result of this Asnar and Ringleberg were more friendly towards me as they liked what they interpreted as criticism of Susana arising from my bad evaluation".*

In a statement made to the Tribunal during his cross-examination of Ms Martin the Claimant stated:-

> *"I accept that it was two cases that were bad. I say that those two cases were picked on purpose to give me a bad evaluation".*

In her evidence to the Tribunal Ms Martin stated:-

> *"The contacts we had to achieve each day was 55. Not every day but in general Bart was over the 55 contacts. Of all the contacts for that month two cases were picked and the Claimant was given a zero evaluation. I did not on purpose give him a bad evaluation. Can't you just admit that you did not deal with the cases appropriately. Nothing happened with the bad evaluation".*

"The system of monthly evaluations is not automatic; I don't hit a box and the qualities come up. The evaluations were based on ten customer contacts and I handpicked the cases to put in the evaluations. I used the same system as all the team leaders. I did the quality we have the software and I see a subject tine about the customer, with the subject line I already see what the topic is, the subject line is the query that the customer has raised and what we have answered. I pick different subjects which the agent has dealt with in order to see how the agent is doing and his knowledge of the subjects. I did not look at all the cases and topics and then handpick the bad cases to give the agent a bad evaluation. It is possible to use the system to do the evaluations in the way suggested by the Claimant".

If one where to accept the Claimants contention that Ms Martin intentionally sought the means to give him a bad evaluation it follows that (a) she must have trawled through hundreds of contacts to find those two bad cases, a fairly time-consuming exercise I would imagine, unless (b) the Claimant had many more bad contacts than the two picked in which case why would Ms Martin have settled on just two cases. And all this alleged skulduggery would have had to be done by Ms Martin within 24 hours of her finding out that the Claimant had applied for another position within the company, if one accepts that it was at this stage that Ms Martin turned against the Claimant. What is more, according to the Claimant his evaluations were not prepared by Ms Martin since in the course of cross-examination he stated as follows:-

"Susana did not know the products etc so she was not competent to do the evaluations and that this is why the evaluations were done by her boyfriend, Van Der Verchte. Part of my evaluations must have done by Van Der Verchte. This is a fact"

which therefore, if correct, indicates that Ms Martin was not purposely giving him a bad evaluation.

The performance card figures for the Claimant for the first quarter of 2018 state as follows in so far the month of January is concerned:-

"The result is in the needs improvement target and not far from the meeting expectation result. Hopefully the work load will be even higher for next month to try to achieve even better results".

"The result is very near the meets expectations target. Please take into consideration the feedback given during our meeting for future cases. The team average is 81%, the result is below the team result but surely this will be improved for next month".

"Bart always uses his time optimally, likes to keep himself busy. The work load is under control but Bart always aims to have higher contacts".

"Bart always answers all kinds of queries, he is always willing to change shifts if required by TL or if any team members ask for it. Bart came on his day off to help out the team with the work load due to being short staffed. During the month of January Bart had poker training, the length of this training was 4 days but due to sickness in the team Bart was required to come to work on the last day. Bart did not like decision which was made, but this decision was made due to Company's decision. Bart should have shown more flexibility regarding the situation and decision made by management".

It is the last quoted statement which the Claimant complains about since as is stated in an e-mail which the Claimant sent on the 5th March *"it keeps being used to put me in a bad light and only partial information is used and only correctly represents reality*". In making such a statement the Claimant is specifically referring to the use of the word "*flexibility*" in the quote above since he believes that he was flexible by going back to his desk on the two occasions during poker training that he was asked to do so.

I pause to note that in the same quoted paragraph reference is also made to the Claimant being flexible in changing shifts and coming into work on days off. Thus, in his evidence to the Tribunal the Claimant stated, when the performance card was put to him, that "*me making a fuss about being taken out of poker training is a lie, this is actually an amassing excellent report of a good employee who is performing and does not need a different management style*".

Bearing in mind that in his evidence to the Tribunal the Claimant stated that, "*I had been asking Susana probably more than once a week to do the poker training*" I can quite see why Ms Martin and Ms Mouhayar would have thought that the Claimant was making a fuss (ie being inflexible) about being taken out of poker training. But this is not the issue. The issue is whether this is a bad quality report and, if so, whether it was prepared as persistent unjustified criticism and, if so, was conduct which when viewed objectively could cause alarm, distress, humiliation or intimidation. In my opinion there is nothing in this report to justify a conclusion that either it was a bad or a materially inaccurate report and/or that it contained unjustified criticism. What is more, even if it where to be seen as unjustified criticism it would not in my opinion be criticism that could cause a person to be alarmed distressed, humiliated or intimidated by it for the purposes of the Bullying Act.

The quality report for February 2018 provided the Claimant with a score 78.75%, up from the previous months score of 70.75%, which is in itself noteworthy. In the performance card for February the following comments appear:-

> "*The result is similar to the previous one in the needs improvement target with a small decrease. The work load is under control even in other language teams where we normally help out. Hopefully for next month more activity is visible if the work permits this*".
>
> "*There is a slight improvement in the quality result, still in the needs improvement target and near to the meeting expectations target. To be able to improve this result for next month onwards the feedback needs to be taken into consideration. Team average is 85% and Bart needs to improve his result to get nearer to the team average*".
>
> "*The communication towards the customers is very good. Susana requested some feedback regarding the case ..... on 7.2.2018 and no feedback was given, an email was sent to him on Wed 7/2/2108 10.57. Susana, TL, requested feedback from him on 1.02.2018 about Bart requesting holidays in week 12 and no feedback was received in this month. Bart focuses on our work load priorities, which is dealing at first with our P4 and P3's*"
>
> "*Bart does not shy away to deal with delicate/complex cases. Bart is in general flexible when it comes to a shift change request also with his colleagues*".

The Claimant expresses disappointment with this report mainly because he does not accept the statement made that he gave no feedback with reference his holiday request for week 12 but he does appear to accept that he produced no feedback with reference the e-mail of the 7th February. The Claimant does not deny that he did not reply to Ms Martin's e-mail of the 1st February. In his evidence to the Tribunal he stated:-

> "*During the 1st February and the 5th March, I did not write to Susana replying to her e-mail of the 1st February but I am pretty sure that I did speak to Susana about this during this time. When I spoke to her about this there was no problem about it until the 5th March when I saw the updated roster and Kieran had been given that week*".

Ms Martin denies that the Claimant made such a verbal request. If the Claimant did not speak to Ms Martin about the week 12 leave request, then he can hardly

complain about the statement in the report. In my opinion the Claimant did not speak to Ms Martin about the week 12 leave since in my view any conversation on this matter would have been put in writing by the Claimant bearing in mind his evidence to the Tribunal that on receiving the e-mail of the 1st February *"I read the e-mail twice and after doing as I was heavily alarmed by reading it"* since *"Susana used leave request denials to bully people and now she was using the same thing against me for the first time"*. In such a scenario the Claimant would, in my opinion, have wanted to document his reply and not just simply have a quiet word with Ms Martin.

In any event, in my opinion the contents of the report are positive overall as his increased score for the month shows. Furthermore, the report does not contain criticism which on the one hand could be viewed as being unjustified and, on the one hand, can be seen to cause when viewed objectively alarm, distress, intimidation or humiliation.

Furthermore, it is also pertinent to point out the contents of the Claimants evaluation report for March 2018 which have the following comments:-

> *"Good result, exceeds expectations, only 8 days have been worked during the whole month".*
>
> *"The best result until now has been achieved. It is meeting the expectations, as always the feedback needs to be taken into account for future similar cases"*

This is a favourable evaluation and not one that you would expect from a team leader intent on engaging in persistent unjustified criticism of the Claimant.

When the Claimant refers to having received bad evaluations what he is in fact saying is that he received evaluations with lower scores than previously. Bearing in mind the explanations given as to why the Claimant believes the January/February evaluations are bad (ie the issue of flexibility and the issue of feedback to the 1st February e-mail), the question that arises, apart from the issue of persistence, is whether these evaluations when considered jointly can be considered as objectively designed to cause alarm, distress etc and subjectively had the purpose of causing those sentiments. In my opinion they do not and more over I do not think that the Claimant himself thought so at the time since in his e-mail of the 5th March 2018 he states:-

> *"My job has changed significantly since I started on 15.05.2017 but unfortunately the evaluations are still done as if we were a bigger team with constant workload sharing and as such the evaluation results are becoming ever more disappointing and demotivating. Isn't it time to adapt the evaluation procedures for the needs of a small and understaffed team and keep in mind the changed circumstances and at least use some leeway in evaluations that compensate for the much more difficult and complicated circumstances in which I am now working".*

The Claimant is here clearly stating that he believes his bad evaluations are due to the pressures of work arising from understaffing and are not a product of persistent unjustified criticism on the part of Ms Martin.

Week 12 Leave Request

The Complainant has alleged that Ms Martin's refusal of his leave request for week 12 was an example of her bullying him. In his witness statement the Claimant states with reference the e-mail received on the 1st February 2018 that:-

> *"After reading the e-mail a second time I felt heavily alarmed by Susana Martin's e-mail as this was exactly what had happened with other colleagues when they had fallen out of her grace; using holiday requests to cause problems".*

It is difficult to understand how the Claimant could possibly be "heavily alarmed" by this e-mail since on the basis of the Claimants own evidence Ms Martin did not turn against him until 5 days later.

Mr Dorland when giving evidence to this Tribunal had this to say with regard to Ms Martin's use of vacation requests for ulterior purposes:-

> *"I had heard from other people, Asnar and Amrani, that Susana if she did not like you would make it hard for you and this happened to me with regard to a vacation request at the end of 2017".*
>
> *"To my knowledge five other team members had issues with their leave. There were me, Asnar, Thompson, Ringleberg and Sabir. Colleagues told me that holidays had been cancelled, this was Ringleberg".*

Mr Van Veen when giving evidence to this Tribunal had this to say about vacation requests being refused:-

> *"As in any company a leave request must have been turned down".*

Mr Asnar when giving evidence had this to say:-

> *"To me it did not happen when Susana gave me a holiday request and then cancelled it. I have not heard this happen to anyone else".*

Mr Amarani when giving evidence had this to say:-

> *"I would not remember whether it has ever happened if Susana cancelled a holiday request which had been previously approved. It is not something that would disturb me that much".*

Two points can be made from the above-mentioned evidence, namely that (i) Mr Dorland's evidence is unsupported by any other team member and (ii) Mr Dorland's evidence such as it is, relates, as I understand it, to the cancellation of a holiday request previously approved and not to the application for a holiday request to be approved. What is more there is no evidence to show the circumstances surrounding the cancellation of the previously approved leave request, if indeed such a situation had ever occurred, and therefore whether or not the cancellation was justified on business needs.

Turning then to the Claimant's leave request of the 31st January 2018. As mentioned previously in this judgment, Ms Martin in her e-mail of the 1st February 2018, asks the Claimant *"have you checked with the team if for example for week 12 somebody can work for you your 8-16 shift? Please let me know*".

The reason for this question would appear to be that on the 11th January 2018 Mr Vanderhoeck, a member of the Claimant's team, had requested leave for a period which included week 12.

There is no record of the Claimant replying to Ms Martin's e-mail of the 1st February 2018, which is somewhat strange bearing in mind he was alarmed by it, until the 5th March 2018, when he wrote on the following terms:-

> *"Another issue that became a problem. I still need to take 7 days of vacation before the end of March but because of low staff numbers that is impossible without creating serious problems of team presence during certain days and hours. I specifically asked for week 12 and noticed that since a colleague was given week 12 off creating this problem for that week".*

It seems clear from this that the Claimant at the time was of the view that Ms Martin had given Mr Vanderhoeck leave after the Claimant had requested his own leave, and that he acknowledged that as a result of low staff numbers this meant he

could not take week 12 off for business needs. In point of fact Ms Martin had approved Mr Vanderhoeck's leave request on the 11th January 2018.

In his evidence to the Tribunal the Claimant had this to say about this leave request:-

> *"I was alarmed because Susana used leave request denials to bully people and now, she was using the same thing against me for the first time. I was supposed to ask people in a team who did not speak to me whether they wanted to change shift? It was her job to do the shifts roster".*
>
> *"During the 1st February and the 5th March, I did not write to Susana replying to her e-mail of the 1st February but I am pretty sure that I did speak to Susana about this during this time. When I spoke to her about this there was no problem about it until the 5th March when I saw the updated roster and Kieran had been given that week".*
>
> *"I assumed from seeing the staff roster that Susana had turned down my request for the week 12 leave. It was possible for me and Kieran to have leave that week".*
>
> *"My evidence is that Susana made up that Kieran had asked for that week two weeks before I did".*
>
> *"The holiday was perfectly possible but she made a problem out of it for me. I accept Kieran asked for it first".*
>
> *"Until today I believed that she had created a paper trail to cover up her lying that Kieran had asked for the week before me. Until today I believe she created unnecessary problems for me about my leave".*
>
> *"I could accept the week 12 reason. Never zero possibility for the May request".*

Bearing in mind all of the above, including that the Claimant was offered week 15 in substitution to week 12, I can see no justification whatsoever for the assertion either that Ms Martin was intentionally fabricating a reason for unreasonably causing the Claimant problems with his leave request and/or that the leave request for week 12 had been refused as some sort of punishment of the Claimant and/or that the leave request was denied for any reason other than the business needs of the Respondent. Indeed I would venture to say that at one stage in the course of the hearing the Claimant came close to accepting this was the case. In my opinion Ms Martin with respect to this leave request did not engage in conduct which fell within the provisions of section 4(1) of the Bullying Act and/or was conduct which when viewed objectively could cause alarm, distress, humiliation or intimidation and, in any event, when viewed subjectively did not have the purpose of causing such sentiments.

8th to 15th May Leave Request

Clause 9.1 of the Claimant's contract of employment states that *"Holiday must be taken at times convenient to the Company and must be approved in writing in advance".*

In his witness statement the Claimant described how the system of holiday requests worked:-

> *"That is how holiday requests worked; you discussed it with Susana Martin, she verbally agreed and then closer to the date you entered it into the system around the time when Susana Martin was making the shift roster for that period. Each year only five days of annual leave could be transferred to the following year ....."*.

When this was put to Ms Martin she stated as follows in her second witness statement:-

> *"Holidays requests did not work in this manner. I preferred written requests. From both my experience and from the Claimant's witness statement, he was always keen to have matters in writing and therefore it does not make sense that such a verbal request would have been reached months prior to a written request".*

What Ms Martin is presumably referring to is the passage in the Claimant's witness statement which states as follows:-

> *"On the 2nd November 2017 I booked flights for my May 2018 annual leave and holiday in Belgium. I booked this as my Belgium passport had to be renewed and for my nephew's (my brother's oldest son's) confirmation, I'm his godfather. I discussed this with my team leader Susana Martin who agreed with the proposed dates and told me to put it as usual in the system closer to the dates when she was going to do the shift roster for that period; end of March, early April. Susana Martin also mentioned that there was going to be a new system for holiday planning in the near future".*

I must admit that I find it difficult to accept that Ms Martin, or indeed anyone else, without knowing what personnel would be available and/or workload there would be at the time in May 2018, or indeed, knowing that there was to be a new holiday planning system soon to be introduced which could change how things where done, would definitely agree to the Claimant going on leave seven months down the line, especially as this would entail the expense of purchasing tickets. What is more so, if it is true that at the time the Claimant, as he states, knew that Ms Martin caused unnecessary problems with holiday requests, why did he not confirm his request in writing at the time he booked his flights?. The Claimant counters such a question by pointing out that at the time he was on good terms with Ms Martin. A valid point but this does not explain why he did not bring up the matter of his May leave until the 17th April 2018, when by then he had, if one accepts his allegations, been bullied for some months previously by Ms Martin and had one leave request in March 2018 turned down as a punishment. In this e-mail of the 17th April 2018, addressed to HR and not Ms Martin the Claimant states:-

> *"With all the ongoing issues I actually forgot to mention that on 11th February 2018 I booked flights to Belgium for my brother's sons confirmation, whose godfather I am. I also booked an appointment to renew my Belgian passport what is a matter of urgency. My flights are on 9th and 14th May but holidays should include 8th and 15th May because I travel via Malaga airport.*
>
> *In the theoretical case I would still be working for cs by those dates; in the present shift roster my week 19 shift is covered by colleagues and week 20 is not included in the planning yet".*

In his witness statement, the Claimant stated that:-

> *"On the 17th April 2018 I sent an e-mail to Danielle Wood and Emma Horwood with a holiday request from 8 till 15 May 2018 ..... I had studied the shift roster and had noticed that there were no issues as, although the team was under staffed, there were sufficient people present to cover the chat and phone hours ..... This holiday had been agreed by Susana Martin verbally before the date of the booking".*

On the 19th April 2018, Ms Wood e-mails Ms Martin asking whether the Claimant's leave request for the 8th to 15th May 2018 can be accommodated. On the 20th April 2018, Ms Martin replied stating that that morning one member had resigned, that another member had previously requested leave and that if the Claimant's request was granted it would leave only one person working in the team; consequently, she could only authorise leave from the 10th to 15th May inclusive.

On the 22nd April 2018, Ms Wood e-mailed the Claimant stating "*I had confirmation that Susana can accommodate 10th to 15th May*". The Claimant replies the next day stating *"as I asked annual leave from 8th till (and including) 15th May. Now you write that 10th to 15th May is OK. As I fly to Belgium very early on 9th May that is obviously a problem*". Ms Wood replies to this stating:-

> *"Due to the rota, it is not possible to give you any leave before 10th May. Please don't forget that the company process is to request leave and have it approved before you book anything".*

I pause to note that the Claimant does not deny that he neither requested or received in writing confirmation that leave for the period 8th to 15th May had been granted prior to booking his flights; the Claimant merely states that Ms Martin had verbally approved the leave request; something which Ms Martin denies. I also note that at no stage does the Claimant state the actual date of his godsons confirmation or why he could not renew his passport if his leave dates were amended; ie he does not appear to make any attempt to be flexible and try to accommodate the needs of his employer but simply insists on what he wants.

In an e-mail of the 23rd April 2018, the Claimant states:-

> *"I strongly disagree with that way of presenting the issue of the annual leave. I was asked to book my annual leave closer to those dates".*

I pause to note that the language used by the Claimant indicates that he accepts he was never previously told that he could have annual leave on those dates; why else the reference to booking the leave closer to the date. This more so as he then gives by way of explanation the reason that as he was so "*seriously sick*" "*I couldn't request the holiday anymore via the intranet*". The Claimant further states:-

> *"It feels like my annual request is now being used to punish me for me considering going to Court over the bullying during the last 11 months.*
>
> *The issue now of not wanting to give me the annual leave is requested is a further proof of victimisation and a clear attempt to make me resign from the company .....".*
>
> and
>
> *"I urge you to reconsider my annual leave request and to take the necessary action to stop this continued bullying immediately as I feel my health problems coming back due to this unnecessary stress".*

I pause to note that if this e-mail correctly reflects the Claimants mental state at that time he admits that he did not have health problems as he refers to feeling "*my health problems coming back*". This is pertinent in the context of the interview he had the next day with Mr Maman, and the proposals put forward to ensure the Claimant's return to work.

The reply to this e-mail comes from Ms Wood that same day:-

> *"As you know annual leave requests should go via your team leader as per company procedure. You sent it to me so I forwarded it on for consideration. The majority of your leave has been approved. However, the days that have been denied, have been denied because the only other person other than you on rota is Kevin and he is booked in to attend Poker Training from 7th – 9th, therefore you are the only agent on shift between 8 – 4".*

It is perhaps somewhat ironic that in essence the Claimant's insistence for leave on the 8th and 9th May would, if agreed to, ensure that a work colleague would have to be taken out from Poker Training, something which caused the Claimant considerable consternation when it happened to him. What is more, had the

Claimant been back at work he perhaps would have been completing the poker training course that Kevin instead was. Be that as it may, the Claimant did not accept Ms Woods explanation since he quickly e-mailed back stating:-

> *"Your information about the rota is incorrect. Attached a screenshot of the roster for week 19.*
>
> *This shows clearly that Cathy is present from 10 – 18 and Kieran is present from 16 – 24. The live chat and phone service from 12 – 20 is fully covered. If the presence from someone is requested from 8 – 10 then this could easily be solved by asking Cathy to come in 2 hours earlier (and leave 2 hours earlier). Claiming I can't take annual leave because of rota is nonsensical. Again, further proof of victimisation".*

The Claimant's analysis of the situation was unfortunately seriously flawed since it was based on Cathy still being employed, which, as from the 20th April she wasn't. When this is pointed out to the Claimant his reply is to threaten to commence proceedings:-

> *"I understand from your replies that if I want to go to Belgium as requested, I will be forced to leave the business too? Is that the solution you propose? Let the Courts decide .....".*

In her witness statement Ms Wood has this to say about the Claimants request for leave:-

> "Susana Martin made every effort to accommodate, but it was simply impossible to grant leave any earlier than 10th May. I was satisfied that Susana Martin had done everything she could to grant the Claimant's request and the Claimant was getting upset over not being able to get his own way"

On the other side of the coin, the Claimant saw things differently since in his witness statement he states:-

> *"Danielle Wood from HR, the same person who mentioned the Duty of Care to me, did not obviously care at all about her Duty of Care. Exactly the same had happened with Dennis Dorland who was bullied out of the company. All of this happened whilst I was looking forward tremendously to my holiday in Belgium to be entirely away from Gibraltar and all work related issues to at least, for a week, be fully disconnected. This holiday refusal saga had a disastrous effect on my mental health and wellbeing and I resorted to even more alcohol consumption to be able to sleep and numb my thoughts".*

To paraphrase the Claimant's view, it appears from this e-mail to be that if you don't accede to what he has requested then this shows that you don't care about him irrespective of what your reasons are for not acceding to the request and therefore you are trying to bully him out of the company.

As from this point onwards the Claimants stated position in e-mails is that he has requested leave from the 8th to 15th May and he is taking that leave and there is nothing further to add.

In his evidence to the Tribunal, the Claimant had the following to say with regard to the May leave request:-

> *"I booked the flight very early on ..... I did not book this without an agreement. It is very highly likely that I would not have booked this without an agreement with Susana. This was the time that we were very nice to each other".*
>
> *"The date 11th February 2018 in the e-mail is incorrect. This was my xmas flights. I had agreed the xmas dates with Susana. The May dates are not referred to in any correspondence with Susana, this was a verbal agreement".*

"To this day I am 100% convinced that it was perfectly possible for me to have that holiday".

"HR reviewed the leave. I am convinced Susana misled Danielle on the leave issue. On this issue I am quite convinced Susana mislead Daniella".

It is clear from the above that the Claimant accepts that there is no document confirming Ms Martin's consent to his leave request for the 8th to 15th May, that the Claimant believes Ms Martin gave verbal consent to such request and that the Claimant believes that notwithstanding Ms Martin's and Ms Wood's view that all of the request could not be met he is of the opinion that the request could and should have been accepted.

In evidence to this Tribunal, Ms Martin stated as follows:-

"I preferred to have everything in writing as I had so many things in my head. I had to see whose working; certain hours had to check how many persons on the floor".

"Normally I always say, a request please in writing so I don't forget and there is no dispute later on. Only one person can take holiday at a time that is the rule".

"Barts request to Daniella on the 19th April a holiday request for the 8th to 15th May. She informed me that Bart had flights to Belgium. The first request from Daniella to me was are you able to settle the holiday request from the 8th to 15th May. I tried to see what the available shifts where and I saw these days are possible, these days are not possible. That week I decided to ask Jalila if she could cancel part of her holidays as I did not have enough staff and I received this request. At the beginning no one had informed me that he had purchased tickets and Bart had not asked me as team leader for the leave. The e-mails continued. I went to Samira and told her and asked what we could do. We then sent Daniella an e-mail saying the 10th to 15th was possible".

"The first thing I know about this holiday is when Daniella sent me an e-mail".

"This exhibit shows why the 8th/9th May was not possible. All Dutch/Flemish members would be supportless".

"I discussed with Samira what we could do. I tried to accommodate Barts and the others requests".

It is clear from the above, that as far as Ms Martin is concerned she did not know anything about the Claimant's wish to have leave in May until the 20th April and that the requirements of the business together with the availability of staff meant that she could only accommodate the Claimant's request for the period 10th to 15th May, which decision had been reviewed and accepted by Ms Mouhayar.

I am not persuaded that at any time before the 20th April the Claimant verbally mentioned to Ms Martin that he wanted leave for the period 8th to 15th, and I am even less persuaded that at any time prior to his purchasing the flight ticket's, let alone the 20th April 2018, the Claimant obtained Ms Martin's agreement to his having leave during the period in question. When saying this I bear in mind that according to some e-mails exhibited the Claimant booked flights for the 23rd December 2017 to 28th December 2017 without the prior consent of Ms Martin and that when challenged on this the Claimant pointed to having informed Ms Levy during his recruitment process; something which Ms Levy denied. I am persuaded that Ms Martin did attempt to accommodate the Claimant's request but was unable to do so for purely business needs, which decision was reviewed and confirmed by each of Ms Mouhayar and Ms Wood. In my opinion not only is there no conduct with reference this leave request which could bring it within the provisions of clause

4(1) of the Bullying Act but even if there were, the Respondent would be perfectly entitled to successfully rely of the provisions of section 4(3) of that Act.

March 2018 Feedback

The ostensible purpose of the e-mail of the 6th April 2018 to all members of the Human Resources Department was for the Claimant to complain about *"a full blast attack by Susana on my person and everything was done for character assassination of my person in front of Samira"* and to counter the contents of the minutes of the meeting of the 8th March 2018 since "*Samira's report is incomplete, important parts of my defence against Susana's very serious accusations are not in the notes and other things do not reflect what I said*". It is therefore important to analyse this e-mail in some detail.

The first point to note is that other than in a couple of passing remarks the Claimant makes no mention of Camp 2 members and/or any current bullying by them. Thus he states:-

> *"I was left no opportunity to explain myself and stress that this was an effort from my side to show an open mind and goodwill towards my colleague Jose Luis with whom I had till then a very difficult relationship".*
>
> *The whole bullying problem (by more experienced team members) that I initially encountered when I started at GVC should have been tackled immediately by Susana ....."*
>
> *"As I stood up to defend my team leader as I always respect my managers, this was the reason for the start of the bullying".*

These are all references to occurrences pre-December 2017 and not current instances. Indeed, this accords with the rest of the evidence which shows that post December 2017 the Claimant's allegations of bullying centred around Ms Martin solely notwithstanding that in general terms he kept referring to the bullying by Camp 2 members the previous year.

The second point to note is that the Claimant very clearly believes that Ms Mouhayar is not only covering up "*Susana's incompetence and total lack of leadership capabilities*" but also that *"the fact that Samira hasn't mentioned it in her notes proves that there is something wrong here that had to be hidden to protect Susana*". These are serious accusations against a senior person. The Claimant has at one time or another made disparaging remarks or serious accusations against absolutely everyone involved or mentioned in this case and on occasions notwithstanding that in documents exhibited he praises those same persons.

The third point to note is that the Claimant engages in pretty extensive character assassination of his own against Ms Martin in this e-mail. The following are some examples:-

> *"Again an example that Susana doesn't know what she's doing and then gets angry when its not done her way, the wrong way. This kind of poor judgement is detrimental for the morale in the team and an important reason for people to leave. Total lack of professionalism and poor management skills from my team leader proven again".*
>
> *"It shows again that Susana has no idea what she is doing and has a superbly childish attitude when she feels her military style orders are not obeyed".*
>
> *"How she can work out on Monday morning what the workload will be on February evening or Sunday morning is unclear to me and in my opinion shows again she is entirely incompetent for her current management position".*

These comments show that the Claimant is not reticent in expressing his opinions and in a forceful manner; something which he demonstrated repeatedly in the course of the hearing.

The fourth point to note is that clearly the Claimant believed that Ms Martin had turned against him as a result of the Claimant's approach to HR for another job, which event he had himself informed Ms Martin of in an e-mail dated the 6th February 2018. Thus, the Claimant stated:-

> *"The fact that I got a first bad evaluation after I had informed my team leader that I had a chat with HR about other jobs in the company (after Stef had announced he got a job at traders) was actually what other team members had predicted would happen. To my utter astonishment my team leader took it personal that I had further ambitions outside CS and this resulted in bad evaluations, a revenge attitude and attacks as in the meeting of the 08.03.2018".*

The being the case we have a clear date as from which the Claimant alleges, he was bullied by Ms Martin; ie the 6th February 2018. Having said this, one needs to note that the January evaluation report for the Claimant prepared by Ms Martin was e-mailed to the Claimant on the 7th February 2018, and therefore it does not seem feasible to me that the contents of the evaluation report given by Ms Martin (a score of 70.75%) to the Claimant, based on matters that had occurred in January, were influenced by the previous days e-mail. What is more the statements made in this e-mail conflict with the evidence/statements made by the claimant to this Tribunal; namely that everything changed between the Claimant and Ms Martin immediately after the *"chaos meeting of the 30th January 2018"*.

Turning then to the Claimant's complaints with regard to the contents of the minutes of the 8th March. These can be briefly listed as follows:-

(i) criticising team leader in front of colleagues – the Claimant does not deny saying something *"about facts and figures" "in astonishment to my monthly evaluation*" but denies that it was criticism of Ms Martin although he accepts that Mr Asnar did take is as that;

(ii) overhead discussion about calling in sick – the Claimant does not deny having reported the matter but is aggrieved at being told not *"to complain about this and that"*;

(iii) the dots and dashes issue – the Claimant is aggrieved that no mention of it is contained in the minutes;

(iv) military style orders – the Claimant accepts that the incident is referred to in the minutes but is aggrieved that it was only superficially mentioned and no reference made to Ms Martin being very angry about this and almost shouted *"You have to do it this way because I tell you so*";

(v) VIP user – the Claimant accepts that this was mentioned in the minutes but alleges that important details of what he said are not contained in the minute; and

(vi) Collaboration – the Claimant accepts that Ms Martin did raise some cases showing he did not collaborate but alleges that the minutes do not reflect his explanations as to what had occurred in each case.

Bearing in mind that the minutes of the one hour long meeting that took place are contained in just four single typed pages, it is not surprising that the minutes are said to be incomplete. Of course, they are and of course one can argue that they could have been more extensive etc but that is not the issue. The issue is whether material things said were intentionally omitted from the minutes in order to make the Claimant look bad. Having read the minutes various times I do not have the

sensation that the minutes were intentionally prepared to make the Claimant look bad or indeed that they contain unjustified criticism and there is no evidence to indicate, let alone show, that the perceptions of the Claimant in this regard where correct.

Turning then to the complaints made by the Claimant against Ms Martin in the e-mail of the 6th April, these can be said to be as follows:-

(i) Ms Martin's use of the Claimant's requests to manipulate or punish him – it is the Claimants contention that "*by only awarding me 3 days off in the first three months of 2018 I had no ability to reload my batteries and this caused my stress levels to soar as I had no way to escape my team leader's bullying for some time*". This is, to say the least a sweeping statement which needs to be analysed since on doing so one can see that:-

(a) the team leaders bullying is only alleged to have started on the 6th February according to the e-mail so the reference to 3 months cannot be correct;

(b) the Claimant did not attend work between the 7th to 14th February 2018 inclusive so he cannot have had to face Ms Martin on those days;

(c) the Claimant did not attend work from the 13th March onwards so he cannot have had to face Ms Martin after that date;

(d) during the period 1st January to 13th March there are days when the Claimant and Ms Martin are either off work or on different or interlapping shifts and therefore there would not have been contact on these days;

(e) The Claimant has accepted in the course of the hearing what Ms Martin had told him at the time; namely that his leave request for March had not been granted because another colleague had two weeks earlier requested and been granted leave for that same period; and

(f) Suffice to say that Ms Martin has categorically denied using any leave requests from the Claimant to manipulate or punish him.

(ii) Ms Martin's use of statistics failed to take account that CS members "*are human beings behind those numbers*". Apart from the probability that the use of statistics was a management decision rather than a decision by Ms Martin as a team leader, this cannot be interpreted as being conduct solely directed at the Claimant;

(iii) Ms Martin's request to the Claimant that he carry out on her behalf the evaluations for colleagues in respect of more complicated cases. Even if one accepts this to be true, it is hardly an allegation that can be brought within the ambit of section 4(1) of the Bullying Act;

(iv) Ms Martin's consent/request to Martijn that he check the Claimant's more complicated cases and do the requisite evaluation. Here again, even if true, it is not an allegation of bullying on the part of Ms Martin; and

(v) Ms Martin's "*total lack of professionalism, covering up of mistakes, serious attitude problems and incompetence*" which the Claimant has had to suffer. Here again none of this, even if true, can constitute conduct that can be brought within the ambit of section 4(1) of the Bullying Act.

I pause to note the total lack of reference in this e-mail to any instance of bullying conduct on the part of any Camp 2 member.

The importance of the contents of this e-mail cannot be emphasised enough since it is this e-mail which according to Ms Wood was taken by the Respondent as being an official complaint against Ms Martin. A complaint which led to a meeting on the 9th April 2018, between the Claimant and Ms Wood, which in turn led to Ms Wood commencing a formal grievance process against Ms Martin in accordance with the disciplinary policies and procedures of the Respondent.

I am not persuaded that the allegations made by the Claimant with reference Ms Martin with regard to the meeting of the 8th March 2018 can be send to constitute conduct which comes within the ambit of section 4(1) (a) or (b) of the Bullying Act and/or would be conduct that could when viewed objectively be seen to cause alarm, distress, intimidation or humiliation.

Other Complaints

These other complaints were not included in the original Claim Form filed but, notwithstanding this, I will deal with them below for the sake of completeness.

The Claimant alleged that on the 9th March 2018, Ms Martin nagged him for not having complied with her standing instruction to do the work load sheet at the commencement of the shift. The mention of this in his witness statement is to the effect that:-

> *"When Susana Martin came in, she opened a full blast attack on me that lasted the full four hours I sat aside her for the rest of my shift. Four hours of nagging, criticising and questioning everything I did, asking about things I was not doing asking about things I was doing. This went on non-stop for four hours and it became the worst four hours of my life".*

In his evidence to the Tribunal, the Claimant stated:-

> *"She nagged me for four full hours by way of revenge for the meeting of the previous day. She is a serial bully".*

Bearing in mind that the meeting of the previous day in the presence of Ms Mouhayar did not end acrimoniously it is difficult to understand why the Claimant believes Ms Martin was after revenge. Revenge for what? Moreover, the Claimant accepts that he did not comply with the instruction to do the work load sheet when he should have done; (ie at the start of the shift) so could legitimately be criticised for not following an instruction.

In her evidence Ms Martin, had this to say about this incident:-

> *"I don't have time to check at home whether Bart had done his daily work load or not. I guess I came to work, read my e-mails and would have seen that the daily work load had not been done. I approached him and asked him why the daily work load not done. I used a normal voice. Why would I be so upset Bart was the only person in the team until 12. You said that you wanted to ask Asnar about the case in the daily work load".*
>
> *"Bart had sat alone for 4 hours. Bart said that he had only one chat which he wanted to discuss with Asnar because he could not do it".*
>
> *"It is not the importance of doing the daily workloads. The issue is that you wanted to do things you own way and not follow my instructions. This is the issue".*

I do not accept that the Claimant was nagged non-stop for four hours but I do accept that he was criticised for not having followed a management instruction;

which instruction Ms Martin was perfectly entitled to give. This being the case I see no conduct on the part of Ms Martin, which could be said to infringe the provisions of section 4(1)(a) or (b) of the Bullying Act.

The Claimant also alleges that Ms Martin directed him to write dates in a particular way for Flemish customers and another way for Belgium customers and that such an instruction was evidence of bullying on the part of Ms Martin since he was told off for not following such an instruction even though other team members had not been given the same instruction.

In his evidence, Mr Van Venn stated:-

> *"I write dates in a specific way. There was some talk about dates but I don't recall what about. I think I wrote dates the same for Dutch and Flemish markets".*

In evidence, Ms Martin stated:-

> *"I may have suggested to Bart about the issue of the dots/dashes but I have checked everyone's evaluations and no one was down scored on the use of dots/dashes. I could have said this. Dutch/Flemish are the same language but sometimes a word is different. Everyone needs to do the same way. If there is a quality check, I did not down score anyone for dots/dashes".*

In his evidence, Mr Asnar stated:-

> *"Dutch/Flemish are the same language save for some differences in vocabulary. For these two markets I do recall being told that the dates should be written in a different way but I do not recall what the difference was. It was not logical but I don't think it should make your life miserable".*

In his witness statement, the Claimant stated:-

> *"During my September 2017 evaluation meeting Susana Martin brought up that I had to change the way I was writing dates in the e-mails to customers ..... Now Susana Martin wanted me to use dots for Belgium like 15.12.2017 and dashes for the Dutch like 15.12.2017. This sounded like total madness to me as I had never heard about different ways of writing dates for the two countries, and I had worked with Dutch people before. I asked around to confirm in the team and nobody else had been asked to write the dates in such a way".*

It is clear to me from the evidence of Mr Van Veen and Mr Asnar that the Claimant was not the only person approached/instructed with regard to the dots/dashes and that this is consistent with Ms Martin not denying she may have issued such an instruction. In my opinion Ms Martin did give such an instruction. Bearing in mind that in September 2017, relations between Ms Martin and the Claimant were good on the Claimant's own evidence, and that he agrees that he merely complied with the instruction without further thought or consequence, I fail to see why or the basis on which the Claimant should be alleging now that it was either an example of victimisation or bullying. It plainly was not and it hardly falls within the limbs required by the Act to be characterised as either victimisation or bullying. The instruction/question was given to others, it could not be seen as a punishment and it can hardly be classified as being offensive, abusive, insulting or malicious whether viewed objectively and/or subjectively.

The Law on Victimisation

Section 7 of the 2014 Employment (Bullying at Work) Act ("the Bullying Act") provides that:-

> *"An employer (A) must not subject an employee of A's (B) to victimisation:-*

(c) as to B's terms of employment;

(d) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(e) by dismissing B;

(f) by subjecting B to any other detriment".

It is clear that with reference the Claimant's allegations with regard to the business analyst job and the poker training the Claimant is bringing his claim under the provisions of section 7(b) of the Act. With reference the remaining allegation to the effect that he was victimised by being treated differently to that of Mr Dorland and/or Mr Van Veen by not being offered a stay at a clinic in Marbella and/or offered support for his mental health problems it is difficult to see how such an allegation can fall under any of the four grounds set out in section 7 of the Act unless you categorise it as a benefit for the purposes of sub-paragraph (b), and I am not convinced one can do so.

So what is "victimisation"? Section 5(1) of the Act defines "victimisation" as follows:-

"A person ("A") victimises another person ("B") if A treats B Less favourably than A treats or would treat other persons in the same circumstances and does so by reason of the fact that, or by reason of A's knowledge or suspicion that, B has:-

(c) brought or intended to bring, proceedings under this Act;

(d) given or intended to give, or intendeds to give, evidence or information in connection with proceedings under this Act;

(e) otherwise done, intended to do, or intends to do, any other thing under or by reference to this Act; and

(f) has alleged or intended to allege, or intends to allege that A or any other person has contravened this Act".

To the best of my knowledge as at the time of writing this judgment there has been no case in Gibraltar interpreting the provisions of sections 5 and 7 of the Act. Moreover, as I understand it, the provisions of sections 5 and 7 of the Act are unique to Gibraltar and not derived from foreign legislation. This being the case I set out below my understanding of what the Claimant has to prove in order to be successful in a claim for victimisation.

In order to prove victimisation a person has the burden of proving the following two limbs:-

(a) he was treated less favourably by his employer than other employees that are or would be in the same circumstances with reference to:-

(ii) terms of employment;

(ii) affording or not affording access to opportunities for promotion, transfer, training or other benefit, facility or service;

(iii) dismissal;

(iv) the subjecting of any other detriment; and

(b) the employer treated him less favourably with regard to (a)(i) to (iv) because the employer knew or suspected that he:-

(i) had bought or intended to bring a claim for bullying and/or victimisation;

(iii) had given or intended to give evidence or information in connection with a claim for bullying and/or victimisation;

(iv) had or would do or intended to do anything with reference to a claim for bullying and/or victimisation; and

(v) had alleged or intended to allege that the employer or some other person had breached the provisions of the Act.

That the burden is initially on the Claimant to prove all of the above is provided for by section 10 of the Act which provides as follows:-

> *"Where, on the hearing of the complaint, the complainant proves facts from which the Tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent has contravened this Act, the Tribunal should uphold the complaint unless the respondent proves that he did not contravene this Act".*

That then is the law, so let us know turn to the allegations made by the Claimant with reference to victimisation.

Allegation of Victimisation

As stated at the beginning of this judgement the Claimant alleged in the Claim Form that he had been victimised with reference a possible promotion to the job of business analyst. It is the Claimant's case that he was a far better qualified and experienced candidate than the person who was given the position and that as a result of the evasive replies he received to e-mails from Mr Kalcher, and the guilty reactions and expressions he states he saw in HR personnel, he believes that there must be another reason for his not getting the promotion, possibly that as the staffing levels within the team were well below par, unnamed persons had decided that he should remain in Customer Services rather than go elsewhere. Thus, in his witness statement of the 1st June 2019, the Claimant makes the following statements:-

> *"On 13th February 2018, still on sick leave, I had a half hour meeting with Noemie Levy at HR to discuss different job opportunities in the company. I was particularly interested in the Risk position I had seen on the job portal but Noemie Levy told me that I did not have the necessary experience in Risk for that specific vacancy. She then said that the role of Business Analyst (1 year maternity cover) would be perfect for me as they would happily accept a junior employee from within the customer service department. With "junior employee" Noemie Levy meant that they were willing to invest quite some time in teaching the new employee the different aspects of the job. She explained to me that for this internal vacancy they were specifically looking for someone with experience in the in house developed customer service sofwares and tools as the job would be about analysing data from the customer services department and report back to the customer service management with presentations and proposals on how things could improve. It sounded like a perfect combination to me seeing my previous experience and background. This vacancy profile also proved to me that my strategy to always say and write positive things about my management, was exactly the right thing to do as I would have to continue to deal with them no matter what other department in the company I would work for. Noemie Levy was so enthusiastic about my unique combination of skills as a former programmer, database administrator and systems engineer with in depth knowledge of the customer service sofwares that the very same day she sent an email to*

introduce me to the department manager for the Business Analyst role, Stefan Kalcher".

"118. Stefan Kalcher replied via email to Noemie Levy and me the same day 13th February 2018 to invite me to do a video conference on Friday 16th February 2018 about the Business Analyst role. Noemie Levy then made the necessary arrangements for that. The initial reaction from Stefan Kalcher sounded quite enthusiastic and that lifted my spirits. In this new job I would be entirely away from the bullies in another building and only occasionally meet with the customer service management and then only in situations where they could not bully me.

119. Stefan Kalcher's reply:-

Hi, guys,

Yes – def. want to have a chat.

We can do a remote session – preferably via bluejeans on Friday around midday OK?

Thanks

Stefan"

"125. On the 16th February 2018 the video conference with Stefan Kalcher for the Business Analyst role took place in a meeting room organised by Noemie Levy from the HR department. The video conference lasted for forty-five minutes and we discussed in depth my knowledge, skills, experience, etc. I pointed out that I used Excel on a daily basis in my customer service work but that my further use of it was a bit rusty, but nothing that a refresher course could not fix. Stefan Kalcher replied that there would be a lot of on the job training anyway as it would take me some time to get used to the server landscape, as he called it. He was very happy with my knowledge of the different customer service softwares I used every day as it would not be possible to train an outsider to learn all of that in a short time. The video chat ended in a very positive atmosphere. I went back to the HR office when the video conference ended and Noemie Levy found it very positive that it had lasted forty-five minutes. She told me that she had expected some twenty minutes and pointed out that it was a very good sign. In the video chat Stefan Kalcher also told me that he knew my team leader Susana Martin quite well. He told me that he was at that moment in the company's office in Vienna as he had to attend to some family issues in his home country Austria".

"174. On the 14th March 2018, the third day on sick leave for stress related anxiety, Noemie Levy sent me an email to inform me that Stefan Kalcher, the manager for the Business Analyst role, wanted to do the testing for the Business Analyst vacancy that week or the following week. I agreed on Friday 16th March 2018 at 14 hrs for the testing. There were then some further emails about what the test was about exactly and it was pointed out that it would be a test on a computer. I was very surprised that all of a sudden the Business Analyst application got expedited after weeks of no progress. Before the test started I asked Noemie Levy some general question about the number of candidates for the vacancy, she replied that I was the first candidate to do the test. Stefan Katcher himself came to see me personally before the test started".

"154. The test was done on a portable computer and there were three questions. The first one was a question on an impossible subject but I

wrote a reply that Noemie Levy confirmed was the correct one. The second one was about the database programming language SQL and I included bits of coding in my reply to show I understood what I was talking about. The third question was to use Excel to work with a big data set. I was surprised by the third question as there had been no mention about this one before. I had indicated that I needed some refreshing on my Excel knowledge during the video interview. If I would have known that there was an Excel question in the test, I would have done a serious effort in my spare time to get up to date again with my Excel skills. There are lots of free tutorials in the internet so this could have been done at no cost for me. The test had been referred all the time as "the SQL test" so the Excel question was unexpected. I succeeded in producing two graphs anyway. I handed the portable computer back to Noemie Levy and we discussed my answers shortly. Noemie Levy seemed to be satisfied with how the test had gone".

"188. On the 3rd April 2018 I sent another reminder email to Stefan Kalcher for the Business Analyst role I had applied for on 13th February 2018, over a month and a half ago. On 6th April 2018 I also sent a reminder e-mail to Noemie Levy. This application was going on for long time now, much longer than originally indicated as initially there seemed to be some hurry. This delay worried me as more and more people were leaving the Dutch/Flemish team and I would soon have become the only experienced person still around in that team. My fear was that the management and HR were scheming behind my back to find a way to keep me in the team to train the new people that inevitably would be needed. Such a scheme would mean that I would be stuck for at least another half a year at customer service and with the Camp Two bullies and my team leader bully".

"189. Later that the day 6th April 2018 Noemie Levy informed me via mail that I had not been successful with the Business Analyst role. The reason given was that Stefan Kalcher and Noemie Levy did not feel that my technical level was sufficient. It surprised me that Noemie Levy wrote "we feel ...." As she definitely did not have the technical knowledge to understand how good or bad my level actually was. The statement was also in contradiction with her initial remark that they were open to someone quite junior for the job, this meant that they understood that a lot of the knowledge could be learned on the job. That perfectly fitted my profile. It also contradicted the initial enthusiasm from Stefan Kalcher that led to the forty-five minute video interview. This email was followed up by a few more about the reasons for not getting the job. I was actually never given a real reason why I didn't get the job, it looked much more like a list of vague excuses and a fobbing off exercise".

"193. I was absolutely flabbergasted by this reply from Stefan Kalcher. This was not a reply at all. He did not explain how I did fail for the technical requirements or what exactly were his reasons for thinking that I did not have the necessary knowledge or the lack of possibility for me to learn what I was missing. This email felt as if Stefan Kalcher was embarrassed with the real reason for not giving me the job and he was trying to fob me off with some general comment that could be interpreted in many different ways. After all, I was only asked to do a test after a successful video interview in which my technical skills and experience were discussed at length. The test itself went well apart from the Excel question but that had been pointed out already during the video interview and had not been a problem at that moment. I decided to send Stefan Kalcher another email asking for a better explanation".

"196. This latest email from Stefan Kalcher continued to be very vague. He did not say which of the required skills exactly was the reason for his worries. His statement "easy path to answers have been chosen" was something I did not understand at all. That my presentation skills (Excel) were suboptimal at that moment was correct but that had been discussed during the video interview and did not create a problem then. I found the content of this email nonsensical as no real information was given that I could reply to or clarify that maybe Stepan Kalcher had made an interpretation mistake. It was clear by now that I would not be offered the job and I would continue to be fobbed off with general excuses and no to the point answers on my questions would be given".

"197. Having worked as a programmer, database administrator and systems engineer for years, I know from experience that these tech people communicate very to the point. Stefan Kalcher now only replied in generalities, what was not the normal way of communicating between techies. We had done the techies talk during the video interview so I knew that we had spoken as techies before. It sounded like Stefan Kalcher was under instructions or pressure from someone to fob me off and he was not very good at it. As I felt I would not get any better or clearer replies I decided to leave it at that and not anger Stefan Kalcher by continuing to push for further explanations which he did not seem to want to give".

In his evidence to this Tribunal, the Claimant gave the following evidence with reference his application for the job of business analyst:-

"I was extremely confident that I would get the job of business analyst. Firstly, in February Levy said I would be perfect for the job. Levy is HR. she knows her stuff".

"On the 16th February I spoke to Stefan Kalcher whilst he was in Viena. We had a video conference. They were enthusiastic about me popping up. The interview was for 45 minutes. I spoke a bit of German with him. We specifically spoke about Vienna".

"At a certain moment he asked whether I worked for Susana. He had worked for the company for ten years. He wanted to test my knowledge on SQL and he only specifically mentioned SQL. I sat a test on the 16th March it was on a computer".

"I sat the exam on the 16th March. One of the questions was on an impossible subject. There were three questions. The impossible question was to see if you could come up with a solution".

"After the test I went to see Levy. She asked me how the test went. I told her what answer I had given for the impossible question and she said that it was the right reply. I assumed that Levy had prior knowledge from other candidates answers as to what the correct reply was".

"My excel level was a bit rusty which could be cured by a refresher course. As to the rest I was over qualified for the job. The successful candidate I was 99% better qualified than he was. I had 20 years experience and an engineering degree. The presentation skills were suboptimal for excel but I am sure that was better than the successful candidate".

"Neomie informed me that I had not got the job. I assumed, I had a strong feeling that he had been told to fob me off. It was easy to conclude at the time that there was some kind of conspiracy going on. I thought he was fobbing me off ..... I don't believe he was trying to make me fail".

In his witness statement of the 24th June 2019, Mr Stefan Kalcher had this to say about the Claimants application for the job:-

"*3. I was in india at the time of the application, on a business trip, and I arranged to have a telephone interview with the Claimant. I am always interested in applications from CS agents as I started out as a CS agent and GVC generally encourages applications internally. I had the telephone interview with the Claimant which was fine; I remember he said he was keen to move, but do not recall any reference to him being unhappy where he was, and we arranged for him to complete a written test as he was applying for a role which was quite different to the one he was performing.*

4. When I received the written test, at pages 2 to 37 of SK 1, I considered immediately that the Claimant was not suited to the job. It was very clear from his answers that he did not have the requisite technical background.

5. There were 3 categories of question in the test; two logic questions, three technical questions and a business question.

6. In relation to the logic questions, one was answered; this was done in a way which was very basic – I would have expected more internet research on the facts and for a number to be derived from a logic sequence whereas the answer provided was theoretical and relatively simple giving no indication of a business analytic background.

7. On the technical side, only one of the three technical questions was answered, which was allowed for in the rules, but which I found surprising given that the questions were rather basic.

8. For the business question, which required an ad-hoc YoY analysis and visualisation to explain findings for the English and German language with regards to Account related requests, I would have expected a proper analysis of the data set. This was not done. The YoY analysis should have involved at least a simple percentage difference calculation whereas in fact, only partial data was used to create a graph showing 6 weeks from a total of 52 weeks. I assessed this as meaning that basic excel skills were not up to the required standard. Further, the presentation skills were not at the expected standard, given that the use of 2 separate graphs for YoY visualisation resulted in the interpretation of the result being missing.

9. I informed Neomie Levy that I did not consider the Claimant to be a suitable fit".

In his evidence to this Tribunal, Mr Kalcher stated as follows:-

"Levy was the RH contact to facilitate the interview. For me everything was following the standard process".

"For me everyone is the same. I check the personalities. I check the skills and I then make the call for myself. I do its purely fact based".

"After the video interview whether its is good or not is not relevant. Do I want the candidate to do the second session. If I say that the candidate goes to the second session it is a positive thing".

"For the vacancy that was open I guess we had more than 5 and less than 10 candidates, I think it was between 7 to 9".

"For me it is the test I want to understand if the basic skills that are required for the role is held by the candidate. I prepare a set of questions, and the questions are the same for all the candidates and usually have a logical

component, a technical component and a business analyst component. All the candidates do not do the questions at the same time or in the same location. The test is the same for all the candidates".

"I don't think Levy would have known the answers to any of the questions. I do not discuss the answers with the HR team".

"I don't recall the time lines for this period. I decided immediately that Bart was not suitable for the job but it took longer to inform him of this for a reason that I cannot recall".

"In question 2 of the logic question I would have expected presentation of numbers and representation of levels. This is a two minute answer in a one hour exam. The test does not exist on one answer only".

"The graph is clearly not good enough to what I am expecting. It takes 3 to 6 months of learning on the job if people have the necessary skills to do the necessary graph".

"This is the job application. Experience using reporting tools includes Excell. Excell is a reporting tool. It is bread and butter".

"I don't know who your line manager was. I don't know Susana in person. I am aware that Susana is a team leader in customer services. I have never met with Susana. My partner knows who she is".

"This is the CV of the successful candidate ..... This person was working very close with my team so I knew the skill level of the person regardless of the theoretical education of the person because of this the decision was made he was successful. He was able to work with the skills required especially with python ..... He had the skill set required for the role".

"I was never asked by anyone not to give Bart the job because he was needed in customer services".

To summarise the above, the Claimant is alleging victimisation on the basis that:-

(a) his comparison of the CV's of the successful candidate with that of his own, shows, in his (the Claimants) view, that at a theoretical level he was the better candidate for the post; and

(b) his perception that:-

- Mr Kalcher was enthusiastic about his application, happy with his knowledge of customer service software and had interviewed him for a long time;
- Ms Levy was enthusiastic about his skill levels, found it positive that the interview had lasted 45 minutes, stated that his replies in the test were correct and satisfied with how the test had gone;
- the process between the advertising of the vacancy and he (the Claimant) being told that he had been unsuccessful was unduly long;
- he was never given a real reason as to why his application had been unsuccessful;

all pointed to their having been an ulterior reason for his not getting the job; namely that the Respondent wanted the Claimant to remain in the Customer Services Department in order to train new employees and that therefore he was victimised.

Bearing in mind that the Claimant himself accepts that Ms Levy did not have the technical knowledge to understand how good or bad the Claimant's level actually was, that the Claimant did not seriously challenge in any way Mr Kalcher's view with regard to the answers given in the written test, and that in my opinion Mr Kalcher's evidence on the following matters was not successfully challenged by the Claimant, and therefore are accepted by me :-

(i) that the Claimant's application was considered and decided on solely by Mr Kalcher without any third party intervening in the process;

(ii) that there was no undue delay in the process although there might have been a delay in informing the Claimant that his application had not been successful;

(iii) that the Claimant's answers in the test sat were suboptimal and did not show the level required for the vacant job; and

(iv) that the successful candidate was known to Mr Kalcher's team and therefore it was known he had the skill set required for the role;

it follows that in my opinion there was no ulterior reason on the part of the Respondent for the Claimant not succeeding with his application for the job of business analyst. The Claimant's application was simply not good enough. In my opinion the Claimant has not proved that he was treated less favourably than other employees that are or would be in the same circumstances with reference to affording or not affording access to promotion/transfer and therefore this allegation of victimisation fails.

Notwithstanding that there is no mention of it in the Claim form, the Claimant has in the course of the proceedings raised two further instances of victimisation; namely:-

(a) that whilst two of his colleagues finished poker training he was never allowed or given the opportunity to do so; and

(b) that whilst the Respondent had treated Mr Van Veen at a clinic in Marbella for his mental health issues the Respondent had never even admitted to the Claimant having any mental health issues let at alone treated him in the same way as Mr Van Veen had been treated.

This being the case I now turn to deal with both these allegations even though they did not form part of the claim filed.

In his address to the Tribunal, the Claimant stated as follows:-

> *"I never finished my poker training which to me was important. Vanderhoeck did finish the training but I did not. Kevin Goutier recently commenced employment and did have poker training in May and this was used as the excuse to refuse my May leave. Two colleagues finished poker training but I did not, I was victimised, I was treated less favourably".*

With regard to the poker training, the Claimant in his 27th June 2019 witness statement states as follows:-

> *"81. On the 23rd, 24th, 25th and 26th January 2018 I finally got my Poker training. I had looked forward to that for a very long time as it was the only product I had a real affinity with. It was also a good way to be away from the toxic atmosphere in the team for some days ..... On 25th January 2018 both Kieran Vandenhoeck (8h00-16h00 shift) and Hamid Ringelberg (9h00-17h00 shift) called in sick meaning that there would be no one present in the Dutch/Flemish team till 16h00. Jaila Kessissa would be there in the morning but she had only just started so was unable to work alone yet. During that morning the trainer received*

a Skype chat from my management in which I asked to leave the Poker training and go to my desk to work. As soon as the trainer communicated that to me during a break I went to my desk without discussion. When I arrived in the customer service department office, I bumped into Jose Luis Asnar who had come in on his own accord on his day off to work as he had seen the emails mentioning the sick leave from home.

82. *I was very surprised by Jose Luis Asnar' action as it was entirely contradictory to his past behaviour and eternal negativity. As Jose Luis Asnar was now present to attend to the Dutch/Flemish customer queries, I was sent back to the Poker training which was a huge relief for me as I definitely wanted to complete the Poker training for my future career objectives. That day we learned about the different sofwares and how to get information from them about a customer's Poker game play, bonuses, tournaments, etc. This turned out to be very complicated and as usual involved a lot of puzzle work. It became very clear that day that dealing with Poker queries was a difficult and time consuming activity, exactly the kind of things I liked doing. This day was all about theory and the following day we would do some exercises to show us how to deal with customer queries. Till now we had learned where to find different bits of information, but not yet how to bring it all together to be able to answer queries. I looked forward a lot to learn how to do that the following day, the last day of the training.*

83. *On the 26th January 2018 both Kieran Vandenhoeck (8h00-16h00 shift) and Hamid Ringelberg (9h00-17h00 shift) called in sick again. Again no one would be present till 16h00 in the Dutch/Flemish team, apart from Jalila Kessissa who was still very inexperienced. Susana Martin had not prepared for this eventually by for example rescheduling the shifts of colleagues so that for instance Dennis Dorland who worked 16h00 till 24h00 would come in the morning and I would take over his later shift (after the Poker training had ended) and I would have completed the training. It was a perfect example of how the Dutch/Flemish team with an incompetent team leader and only six members (and a new starter) was under-staffed so that sickness or holidays from team members would seriously disrupt the normal functioning of the team. When I was called out of the Poker training I did so immediately and without protest. On the way to my desk I popped in at Samira Mouhayar's glass office to inform her that I was going to my desk, as requested. I expressed my worry that by missing the final and most important Poker training day, I would be unable to answer Poker queries from customers. Samira Mouhayar answered that she would organise something like setting together one full day with an experienced Poker employee to learn on the job how to do it. I found that a perfectly reasonable proposal that I gladly accepted and I thanked Samira Mouhayar for that, mentioning how important the Poker product was for me personally. Unfortunately, Samira Mouhayar's promise was not kept and I never finished the Poker training although I brought the issue up several times in the following weeks and months as this was an important professional aspect for me because of my affinity with the Poker product".*

In an e-mail dated the 5th March 2018, the Claimant states the following with regard to the Poker training incident:-

"I wish to point out an important misunderstanding/misinterpretation regarding the partly cancelled Poker training in January as you mention in the "PERFORMANCE CARD SOCIAL REPORT 2018", specifically in the "initiative & flexibility" section where you write. "During the month of January Bart had poker training, the length of this training was 4 days, but due to sickness in the team, Bart was required to come to work on the last day, Bart did not like the decision which was made, but this decision was

made due to company's decision. Bart should have shown more flexibility regarding the situation and decision made by management".

The problem with the Poker training was indeed that high numbers of the DU/BE team called in sick causing a situation that on Thursday (3rd day of the training) and Friday (4th day of the training) mornings nobody would be present to answer user's queries. On Thursday Samira asked Miranda, the trainer, to tell me to leave the training and send me back to my desk to deal with the users. AS SOON AS this was communicated to me I LEFT for my desk IMMEDIATELY WITHOUT ANY OBJECTIONS. Miranda also communicated to me that the most important part of the Poker education, the practice part, would be done/rescheduled for Friday. When I arrived at my desk I met with Samira and team number Jose Luis who came in on his day off to help. Seeing this, Samira sent me back to the Poker training after thanking me for my flexibility and understanding priorities. Nothing of this is reflected in your evaluation.

On Friday exactly the same happened: several people called in sick, no one present to seal with DU/BE customer's queries and this time Jose Luis wasn't there. As such I was called out of the Poker training again to work at my desk, WHAT I DID AGAIN for the second time in 2 days out of 4 days of training. If that doesn't show flexibility and respect for a management decision, then I don't know anymore what else I should have done to show flexibility and respect. I have made clear though to Samira, immediately at my arrival at my desk, that I feared that taking me out of the training at that point would make it impossible for me to answer Poker queries. Samira answered to me that my training would be completed later by having an experienced Poker CS employee sit with me for a day to do some practice work that would finish my training and prepare me to answer user queries. I agreed with that solution. AND I STARTED WORKING immediately, showing flexibility and understanding for the management decision. This is not reflected in your evaluation, actually the entire opposite of this is written in the evaluation. I don't understand why.

Until today the promised follow up of the training has not materialised and although I have tried to answer some Poker queries, I found myself incapable of doing so. I might add to this that I am well known to constantly take on the more complicated queries that need a lot of study work as I actually enjoy doing that. So if I say that I can't solve Poker queries this simply means that I can't solve them because I missed the practice part of the Poker training. During the Poker training I learned how to play Poker (what I already knew anyway) and I learned about the existence of tools with Poker data. But I missed the part of the training where you connect a user's query to the data stored in the tools that will give you the answer/solution to the initial question and lead to customer satisfaction. I find it terribly demotivating that today I got AGAIN a reminder with a Poker exercise for which I have already three (3) times stated that I am not able to answer or solve for LACK OF KNOWLEDGE and lack of TIME".

"Regarding the Poker training: I am willing to come on a day I'm off to finish my Poker training, I don't need to be paid for it, I am eager to tackle this type of queries as Poker is a personal interest of me, much more than e.g. Sports or Casino".

In his evidence to this Tribunal, the Claimant stated as follows:-

"Ringleberg called in sick and Kieran called in sick. I never believed that they did it on purpose. Bad luck that two different people called in sick on those two days. On the 23rd to 26th January. The last two days Ringleberg and Kieran called in sick. On the 25th January Asnar was on his day off and Asnar on his day off came in to work of his own initiative. Camp 2 did not sabotage that training in fact they positively assisted in resolving the issue".

"I tried to sit in with more experienced personnel so as to finish my training but it was impossible. I said to Samira that I would do chats but I was worried that I would not be able to handle things as I had not finished my training. Samira suggested an excellent solution which was for me to sit a whole day with a member of the French team to learn. This was entirely a good solution which I took on board and did but then Susana said I was being inflexible and caused a problem".

"Between the 23rd to 26th January I started poker training. I was asked to leave the training. Susana was on leave. There were two others in the team who where supposed to be off but Asnar came in off his own accord. Samira said Bart go back to your training. On the last day of training the same people were sick. I was asked to go to the floor, I went immediately. On walking in Susana was waiting for me and apologised. I said there was one worry that I might not be able to answer client's questions and she said we are going to sort this out, we are going to put you in for a day with an experienced poker trainer and I said perfect and went into work".

"The last day of training I missed the full pieces of the puzzle being put together which enabled you to do the job".

"It is true that Miranda sent me some poker cases at the request of Susana by e-mail which I tried and was not capable to do them and I told Susana this"

"I never sat with the poker trainer for the day promised"

"I have been asking Susana probably more than once a week to do the poker training and it is not true that Susana asked me to sit with others to do this and I refused".

"The staff levels in February collapsed. We started of with 8 and by February this had collapsed".

"I volunteered to come in on a day off without pay to finish the poker training".

"I saw that my not being able to finish the poker training was Susana punishing me as I did not see the logic for it".

"It is possible that in February staff levels were too low and that in March I was away so that I could not finish the poker training. It was not logical that I could not finish the training. At first the reason for not completing it was not distressing but over time in combination with other things it become alarming and distressing. I was not intimidated or humiliated by it".

Summarising the above, it is Claimant's contention that:-

(i) whilst he never finished his poker training two other employees commenced and finished the training at some point after January 2018 and before his dismissal in May 2018 – in one case in May 2018;

(ii) Ms Martin should have foreseen the possibility of employees falling sick whilst the Claimant was doing his poker training and therefore amend the shift rosters in order to provide for such an eventuality;

(iii) although Ms Mouhayar had promised to arrange for the Claimant to sit with an experienced poker employee in order to learn, this had never materialised;

(iv) he volunteered to come into the office on a day off in order to finish his training but this offer was never taken up;

(v) it had been impossible for him to sit with more experienced personnel to finish his training; and

(vi) his not being allowed to finish his poker training was simply Ms Martin's way of punishing him.

Having said this, Claimant accepts that:-

(a) the poker trainer (Miranda) at the request of Ms Martin had set him some poker cases to complete;

(b) staff levels within his team collapsed in February 2018 so that the team was undermanned;

(c) as from ethe 13th March 2018 he was away from work; and

(d) He was also away from work some days in February 2018.

In her second witness statement, Ms Martin states as follows:-

"Lizanne Sanchez was the poker expert and I told the Claimant to address any poker queries to her, if necessary".

"The Claimant alleges that I am to blame for him not completing his poker training. If I see that changes are needed to the rota, then I would make them, but I could not predict who would call in sick the following day and this is an unreasonable expectation of me as a Team Leader. Further, I was not actually in the office for part of the period the Claimant is referring to".

"There was no revenge mission or vendetta. The Claimant had to return to the work floor due to business needs and was therefore moved from Poker training by Samira. The Claimant persistently complained that he being punished. As a result, I asked Miranda, the poker trainer (and generalist trainer) to send me cases for the Claimant to do, but he never did them. We said we were going to give him the full training or finish the training again or he could check with Miranda when he would be available".

In her evidence to this tribunal, Ms Martin stated the following with regard to the Poker Training incident:-

"Bart did make an issue of being taken out of poker training. I was away on holiday so I was not there on the day it happened".

"I was off but I was made aware by Samira/Daniella about Bart constantly complaining and insisting about the poker training. We were fitting in everything to have Bart get the poker training knowledge. Bart was complaining about being taken out of poker training. The period that Bert was complaining about being taken out of poker training and not being given training was January.

When there is a new entrant poker training is scheduled into their programming if staff resources allow for this. I don't recall of Vanderhock had it programmed. I don't recall if Gautier finished his poker training in May".

In her second witness statement, Ms Mouhayar states the following with reference the Poker Training incident:-

"As to paragraph 83, Dennis finished at midnight the day before and we would not call him to come earlier following late shifts. The Claimant was on day four of poker training. This final day was more of a wrap-up/summary day, so he did not miss out on much content. Usually we would allow people to finish training, but I explained that we needed to be flexible with business

needs. This was not a punishment and it makes no sense to suggest that depriving an employee of a training opportunity could equate to a punishment. The Claimant failed to understand this, I had to constantly reassure him that he would finish training in some capacity. I also believe Susana Martin sent exercises related to the training for the Claimant to look over'.

In her evidence to this Tribunal, Ms Mouhayar stated as follows:-

"I don't recall the dates but yes in January 2018 Susana sent Bart to do the poker training. On the third day of the training there were three people sick so I asked Bart to leave the training and go to his deck. I believe that Bart came to my office first to complaint about being called out. I was trying to explain to him that it was a business need and not a punishment and that we would have him do his training at a later date and then Bart went to his deck".

"I do not remember that on the third day when Bart got to his desk Asnar had arrived and that therefore I told Bart to go back to his training".

"Whether it was one or two days that I asked you to leave the poker training I do not recall at all but I do recall when you came to my office. I can't confirm that in the office I told Bart that he could finish his training by sitting one day with an experienced poker trainer. What I can recall is that Susana told me that she had given Bart some exercises but I did not check this was the case because it is not my day to day job to double check. After the conversation in the office I think Bart went to his desk and worked".

"Not creating a problem, we were short staffed. I needed to cut short a training which I did rarely and then the CRC agent should go back to his desk. The whole thing about coming to the office in between is Bart's signature".

"I don't know if Bart finished his poker training".

"I do not recall if Susana was on holiday all that week".

"I perceived at the time that Bart was a bit aggressive during the chat in the office about the poker training".

"I don't recall haring spoken to Susana about the incident but I must have done so as its in the performance cards".

"I am not 100% sure if Bart complained about the poker training once or more often".

Summarising the evidence of Ms Martin and Ms Mouhayar, it is the Respondent's position that:-

(a) the Claimant was instructed to address poker queries to the poker expert;

(b) the Claimant was sent poker cases to do for the purposes of training but he never did them;

(c) the Claimant was told that he would be given the training again or allowed to finish it although no specific time frame was given to him;

(d) the Claimant was taken out of the training for business related requirements and not to punish him in any way;

(e) the Claimant was not as a punishment deprived from doing or finishing his poker training; and

(f) everything was done to enable the Claimant to acquire the poker training.

There is no concrete evidence to indicate whether during the months of February to the end of April 2018 the Respondent carried out and/or had programmed to carry out poker training sessions for employees; although the Claimant does allege that two members of his team did so; and it seems from a reference in an e-mail exhibited that there was a course from the 7th to 9th May during which Kieran may have taken part. What seems to be clear, and the Claimant has not alleged otherwise, is that there was no such training session programmed or held in February/early March 2018 when the Claimant was still attending work, and therefore during said period there was no session that the Claimant could attend, or could be deprived from attending. After the 13th March 2018 and onwards the Claimant was either on medical leave or suspended and therefore not in a position to undertake any poker training course/refresher course even if indeed such sessions where or could have been held by the Respondent during this period.

Bearing all of this in mind, together with the fact that the Claimant accepts that staff levels were down during February 2018 (which would restrict availability to attend sessions), and that he was sent poker cases to complete, and that he was told more than once that he would be given the opportunity of finishing his training, and that there was a very short time frame between the 30th January and the 13th March 2018, I am of the opinion that the Claimant has not proved that the Respondent treated him less favourably than other employees that were or would have been in the same circumstances with reference the poker training.

Turning then to the Claimant's allegation that he was victimised by the Respondent by not being offered the help and support that had been offered to other employees when they suffered mental health problems, and in this respect I bear in mind the provisions of clause 10.4 and 10.5 of the Claimant's contract of employment as referred to earlier in this decision.

In his address to this Tribunal, the Claimant stated as follows:-

> *"At no stage has the Respondent mentioned my mental health let alone received the offer made to Dorland which is obviously victimisation. The employer never asked or investigated my mental health problems".*
>
> *"I was not given any options. They never offered any help to me for my mental health problems. I clearly and obviously needed help. Not one mention of mental health in all their documents".*

When in the statement referred to above the Claimant refers to *"the offer made to Dorland"* I believe that the Claimant is referring to the contents of an e-mail dated the 18th December 2017 sent by Ms Wood to Mr Dorland which states as follows in the relevant part:-

> *"Your attached sick note indicates that you should be off work until you have a diagnosis. However, you have confirmed that you have been back in work since 28th November. I understand you self-diagnosed as you felt well enough to be in work. I also understand that you have spoken to the clinic to ask them to confirm in writing that you are well enough to be back in the office. It is very important that we receive a copy of that letter stating you are OK to be back in work as of 28th November, as it is a legal requirement.*
>
> *When you get your diagnosis you need to let us know if there is anything we can do as an organisation to support you in the workplace, so we can look at reasonable adjustments for you".*

When the Claimant put the contents of this e-mail to Ms Wood in cross-examination, she stated in evidence as follows:-

> *"As to Vol 1 Tab 9 Page 18 Bart did not receive a document like this. This is a different case. This case he had been signed off work sick and he had*

returned to work before the sick note expiring. Now from a legal perspective he should not be back in the office working when there was a sick note in force and therefore when people want to return to the office prior to the expiration of a sick note we ask them to get an update from a doctor comparable to a fit for work note in the UK. Additionally, if it is a physical injury, we always ask whether we can do anything to help them whilst at work (eg back problem)".

"One person mentioned to me that they had mental health problems, Van Veen was suffering from depression since he was young".

I did talk to Van Veen about his sick leave. The management did mention to Van Veen that there was a clinic in Marbella for mental health. He told me that GVC had helped him at the clinic in Marbella. I assume that GVC paid for it. His sick leave was for a month at the clinic and a while later he was two weeks at the clinic".

On the other hand when the Claimant cross-examined Mr Van Veen on this matter, the witness stated as follows:-

"I have been twice to the clinic, once for a short period whilst working for GVC. I believe it had to do with my youth and not with my current situation; it did not have to do with my GVC employment. At the time the company would have records of this as I remember seeing a doctor in Gib which was requested by GVC to see if I was fit to resume work. I said I would like to return to work and they said they would like me to be assessed by a doctor before returning to work. I had been assessed to return to work at the clinic but they wanted an assessment by their own doctor. I have been there twice, one short period of four days ..... I believe there must have communication between the clinic and GVC about this but I have not seen it".

"The two periods of four days and two weeks were over a year. There was time in between".

"I believe I have had sick leave up to a certain level and after that it went off my salary or leave. If in a clinic you don't worry about money".

The evidence of Mr Van Veen accords with the evidence of Wood with reference Mr Dorland, and therefore I accept it, so that it is clear in my view that the Respondent was consistent with how it acted with regard to Mr Dorland and Mr Van Veen. It is also clear that in the case of both Mr Dorland and Mr Van Veen the Respondent was aware that they both had mental health issues backed by the corresponding medical paperwork. In the case of the Claimant the medical documentation/information the Respondent had was to the effect that in March/April 2018 he was suffering from "stress related anxiety" (which could be work related or otherwise); he did not have a prior history of mental health problems as both Mr Dorland and Mr Van Veen had. Moreover, after the last sick note, which the Claimant himself stated was the last sick note which Dr Fitzpatrick was prepared to issue him with, the Claimant never returned to work before the expiry of the date set out in the sick note or indeed returned to work at all. The circumstances of the persons concerned are indeed factually different and there is nothing to suggest that had the Claimant returned to work early or indeed returned to work or had the Respondent held documentation which showed prior or ongoing or existing mental health concerns that the Respondent would not have acted with reference the Claimant as it had acted with regard to Mr Dorland and/or Mr Van Veen. This being the case, I find that the Claimant has not proved that the Respondent did treat him less favourably than other employees that are or would be in similar circumstances with reference to any of the four criteria set out in the first limb of section 7 of the Bullying Act.

In the event that I am mistaken and the Claimant can be said to have proved that the requirements set out in section 7 of the Bullying Act are met with respect to his allegations with regard to poker training and/or the business analyst position, I

would nevertheless still dismiss the said two claims since in my opinion the Claimant has not proved that the second limb, namely the provisions of section 5 of the Bullying Act, are met. There is no evidence to show with regard to the business analyst position and/or the poker training, that prior to the Claimant commencing his stress related anxiety sick leave on the 13th March 2018, that the Respondent knew or suspected that the Claimant intended to bring a claim for victimisation or intended to give evidence or information in connection with a claim under the Bullying Act or intended to do anything with reference a claim under the Bullying Act. The first reference to court proceedings made by the Claimant comes in an email sent by the Claimant to Ms Wood dated the 13th April 2018, where the Claimant states:-

> *"My accusations of bullying, although they are now well documented, are apparently not serious enough? Over the last 11 months I have shown an extreme amount of goodwill to sort this out but it looks more and more like I will have to take this whole saga to court. A decision I will not hesitate to make and I have already thought through. It shows my goodwill again that I haven't done so yet".*

This e-mail was sent well after the Claimant had stopped attending work, well after the decision not to give him the business analyst job had been made, and well after he could have attended any poker training session/refresher course. Consequently, there could not have been any reason for the Respondent to believe or suspect before the 13th April 2018, that the Claimant intended to bring a claim under or give evidence in relation to a matter under the Bullying Act. The provisions of section 5 of the Bullying Act are therefore not met.

Law on Unfair Dismissal Claim

As previously stated in this judgement, the Claimant included in the Claim form a claim for unfair dismissal. That claim was in 2020 dealt with as a preliminary point since the Tribunal was concerned as to whether it had the jurisdiction to determine such a claim. In my judgment of the 17th April 2020, I stated as follows:-

> *"The right that every employee has not to be unfairly dismissed is contained in section 59 of the Employment Act (hereinafter "the Act"), which provides as follows:-*
>
> *"59(1) In every employment to which this section applies every employee shall have the right not to be unfairly dismissed by his employer.*
>
> *(2) This section applies to every employment except in so far as its application is excluded by or under any of sections 60 to 63".*
>
> *Section 59 has therefore got to be read in conjunction with the provisions of sections 60 to 63 of the Act in order to see whether the employee has acquired in his particular case the right not to be unfairly dismissed.*
>
> *Insofar as this case is concerned, the provisions of sections 61 and 63 are not relevant and consequently I will not deal with them below. Similarly, with regard to section 60(2). This therefore leaves the following provision as being relevant to the point in issue.*
>
> *"60(1) Subject to the provisions of subsections (2) to (4) and of section 62, section 59 shall not apply to the dismissal of an employee from any employment if the employee:-*
>
> (g) *was not continuously employed for a period of not less than 52 weeks ending with the effective date of termination; or*
>
> (h) .....".

On the face of it, and as both parties agreed that the Claimant was not employed for the 52 week period prescribed by section 60(1)(a) of the Act, this would mean that the Claimant had not acquired the right not to be unfairly dismissed. However, this is not the end of the matter since sections 60(3) and (4) and 62 of the Act provide exceptions to the 52 week requirement. Dealing with the first exception.

"60(3) *Subsection (1) shall not apply to the dismissal of an employee if it is shown that the reason (or, if more than one, the principal reason) for the dismissal, or in a redundancy case, for selecting the employee for dismissal, was one of those specified in section 65A(1)(a) to (e), 65B(1)(a) to (e) or 65C(1)".*

"65B(1) *The dismissal of an employee by an employer shall be regarded for the purposes of sections 59 and 70 as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee.-*

(a) .....;

(b) .....;

(i) being an employee at a place where:-

(i) there was no such representative; or

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

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

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

(k) ....."

After having considered the provisions of the Act, and the facts as known to the Tribunal as at that time, I concluded that:-

"(i) the Claimant does not comply with the 52 week qualifying requirement prescribed by section 60(1)(a) of the Act; and

(i) the Claimant was not able to persuade me that there was a prima facie case that either the Claimant could engage any of the exceptions prescribed by section 60(2) to (4) and section 62 of the Act and/or that the principal reason for his dismissal was one of the exceptions prescribed by sections 60(2) to (4) and 62 of the Act.

This being the case I have no alternative but to dismiss the claim for unfair dismissal filed by the Claimant, and I now do so".

The Claimant appealed to the Supreme Court my decision to dismiss the claim for unfair dismissal filed. In his judgement, Mr Justice Yeats succinctly set out the basis of the Claimant's appeal; namely:-

"8 In this appeal the appellant argues that the reason (or the principal reason) for his dismissal was the reason specified in section 65B(1)(d). If he is right as to the reason for his dismissal, then the 52 weeks minimum qualifying period for the bringing of a claim before the Employment Tribunal does not apply and his claim should proceed. Section 65B(1)(d) provides follows:

> *"65B. (1) The dismissal of an employee by an employer shall be regarded for the purposes of sections 59 and 70 as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee –*
>
> ....
>
> *(d) in circumstances of danger which he reasonably believed to be serious and imminent and which he could not reasonably have been expected to advert, left, or proposed to leave, or (while the danger persisted) refused to return to, his place of work or any dangerous part of his place of work;"*

I shall refer to this provision in this judgment as "section 65B(1)(d)".

Mr Justice Yeats after going through the provisions of the Act and considering the evidence before him concluded as follows:-

"56. In my judgement, the appellant's evidence taken at its highest, sets out a case for unfair dismissal – for example see paragraph 267 of his witness statement where the appellant expressly states that on the 29th April 2018 he believed that he could not return to work due to the harm to his mental health he was likely to suffer from the bullying. He had brought this to his employer's attention by his email of the 1st May 2018 (taken together with previous notifications). His dismissal followed his refusal to return to work. The appellant's claim should have been allowed to proceed to a hearing as he had raised a prima facie case that section 65B(1)(d) is engaged.

57. The appellant did not challenge the Chairman's findings contained in paragraphs (c) to (h) at page 13 of his judgment and which I have quoted at paragraph 34 above. These do not in my judgment affect the result of this appeal as I have determined that there is a prima facie case that section 65B(1)(d) applies. No doubt there will be challenges to the reasonableness of the appellant's belief and the genuineness of his claimed reason to refuse to return to work. Was it because of the bullying and harm he believed he would suffer as a result or did the appellant want time off to prepare his appeal and/ or go on annual leave on days which had not been authorised? Could he not reasonably have averted the circumstances of danger following Mr Maman's proposals? Why was the basis of his claim not expressly set out in the claim form? These and other matters will have to be assessed at the hearing".

The upshot of all of the above is that the claim for unfair dismissal is restricted specifically to the ground set out in section 65B(1)(d) of the Act. With regard as to how section 65B(i)(d) should be interpreted, Mr Justice Yeats held as follows:-

"24. It seems to me that, for the present purposes, two phrases in section 65B(1)(d) need to be considered. The first is 'in circumstances of danger' how is this phrase to be interpreted? As has just been observed, in Harvest Press it was said that it was to be interpreted without limitation. I would respectfully agree. As importantly, in my judgment, a circumstance of danger can be particular to an employee. For example, an employee with hearing loss who in unable to hear audible signals may be exposed to a risk in a workplace which may not be dangerous at all for an employee with good hearing.

25. I accept that the word 'danger' is usually associated with physical injury, but this clearly need not to be so. 'Danger' is defined in the Oxford Dictionary as being "liability or exposure to harm or injury; risk, peril." It appears to me that an act or situation can be a risk to a person's mental health as well. It can expose him to harm.

26. Applying these propositions to our case, an employee who has previously been diagnosed by a medical practitioner as suffering from stress related anxiety is, arguably, placed in a circumstance of danger if he is asked to work in a situation where his anxiety can again be triggered.

27. The second aspect of section 65B(1)(d) which is particularly relevant is the phrase "[which he reasonably believed to be] serious and imminent". Dealing only with the words 'serious and imminent' for the purpose of this analysis, a risk that an employee has to take time off work on stress related anxiety could, depending on the facts, be 'serious'. A mental health illness can have devastating effects. As to 'imminent' this would again very much depend on the facts of the case but it would seem to me that there can be situations which could immediately trigger a mental health breakdown.

28. In conclusion therefore, I find that section 65B(1)(d) does include protection for employees who are exposed to situations which could be harmful to their mental health. Of course, the circumstances at work would have to be such that there exists a risk to the employee's mental health which the employee reasonably believed to be both serious and imminent. The reasonableness of the belief will undoubtedly be key in many cases. The requirement that the employee was unable to reasonably avert the danger would also have to be met."

"37. Before I go on to look at the correspondence and documentation in this case I will deal with whether it is in fact a requirement that in order to fall within section 65B(1)(d) an employee must inform the employer of this reasons for leaving or refusing to return to work. I consider that it is. Not only is it reasonable for this to be read into the section but the Directive also requires it.

38. In this regard I have considered the UK Employment Appeal Tribunal case of Balfour Kilpatrick Limited v Acheson & ors [2003] IRLD 683. Although it was not relied on by the parties to this appeal, it is referred to in Oudahar v Esporta.

I therefore conclude that there is an obligation on the employee to inform the employer that he believes there are circumstances of danger which are serious and imminent and which he cannot avert and that he is refusing to return to work for that reason. Section 65B(1)(d) must be read in that way to be compatible with the Directive."

Taking the provisions of section 65B(1)(d) of the Act, as read with the judgment of Mr Justice Yeats, into account I am of the opinion that the following two-step approach has to be applied when determining the Claimant's claim for unfair dismissal; namely:-

(a) Firstly to determine whether the criteria set out in the section is met as a matter of fact; ie were there circumstances of danger which the employee reasonably believed to be serious and imminent, and which he could not reasonably be expected to avert? Was it the case that the employee left, or refused to return to his place of work or any part of it while the danger persisted and had the employee so informed the employer. If these criteria are not satisfied then the claim must be dismissed; and

(b) Secondly, whether the employer's reason (or principal reason) for dismissing the employee was because the employee left, proposed to leave or refused to return to work. If it was then the dismissal is unfair.

In the recent case of Rodgers v Leeds Laser Cutting Limited (a UK Employment Tribunal case dated 29th January 2021) the Tribunal, after referring to the case of Oudahar v Esparta Group Limited (see above) stated that in applying the afore-mentioned two-step approach it had to apply the law to the facts in the following way:-

(i) Did the Claimant reasonably believe that there were circumstances of serious and imminent danger – did the Claimant believe the circumstances were of serious and imminent danger and was that belief objectively reasonable?

(ii) Could the Claimant reasonably have been expected to avert the dangers?

(iii) Did the Claimant take appropriate steps to protect himself or other persons from the danger?

(iv) Did he take appropriate steps to communicate these circumstances to his employer by appropriate means?

Unfair Dismissal Claim

The meeting of the 9th April 2018, between Ms Wood and the Claimant was minuted and the minutes of that meeting approved by the Claimant so there is agreement on the matters covered in said meeting, albeit in abbreviated form. According to the minutes the Claimant made the following allegations with reference to bullying by Camp 2 members and Ms Martin. With reference Camp 2, the following is recorded:-

"BVT Can I point out one thing, I started out in May last year with a lot of illusions and hopes, almost every single day since I started working, I've been bullied, if not by team leader then people in the team, 11 months".

"DW Okay lets wind back a little, when we conducted the investigation, you had issues with Jose Luis and Hamid, both are now removed from the situation.

BVT Hamid left. Jose Luis on 2 May.

BVT Only moved 10 metres away he continues to walk in and do his shit stirring all about Susana, I now understand why he is frustrated about Susana and why that hatred is so deep with him. I think it is identical story to me".

DW These team members are now moved from your immediate environment.

BVT No we still share same office space, same colleagues, same kitchen and toilet.

DW But you don't have to interact with them, do you?

BVT Yes I will, they are VIP managers.

DW How is your working relationship with Jose Luis day to day? Better?

BVT *Well it's not worse, but its not what I would call a relationship, we both acknowledge that the other exists.*

DW *Do you behave professionally and get the job done?*

BVT *Yes, he is a very good worker, we may not be friends but he is a good worker".*

The points I take from this interchange are that (i) Mr Asnar is, according to the Claimant, channelling his attention on Ms Martin rather than the Claimant (ii) although not friends the Claimant agrees that he is working professionally with Mr Asnar and (iii) the Claimant and Mr Asnar are actually acknowledging each other's presence. What is noticeable is that there is no mention made of Mr Asnar or any other Camp 2 member recently or currently engaging in any conduct which can be said to be bullying of the Claimant in any manner. With reference Ms Martin the following is recorded, amongst other things:-

"DW *Since you told her that you are looking for another job, she has become more critical of what you are doing and watching what you are doing?*

BVT *She is on a mission, maybe she thinks I make her look bad, she has been going for me, I said what the hell is going on here, I have been begging her in that meeting with Samira to say can we work together better.*

DW *Okay, so you said you would like to work better together, what was her response?*

BVT *She agreed in the meeting and then the next time we worked together it was even worse – I said to Samira that attack for over an hour on my professional character".*

It is clear from this interchange, as read with the rest of the recorded minutes, that the current problem insofar as the Claimant was concerned was Ms Martin and her behaviour towards him, that it was Ms Martin who had made him physically sick and that he did not think he could work with the Ms Martin going forwards.

Following this meeting the necessary arrangements were put in place for the grievance meeting of the 24th April 2018, held between the Claimant and Mr Maman. Minutes of this meeting were taken by Ms Horwood. I make the following comments with regard to this meeting:-

(i) It is clear that Mr Maman when commencing the meeting believed that the only issue for discussion was the bullying allegation made against Ms Martin whilst the Claimant keeps referring back to events of May 2017 onwards and the problems he had had with Mr Asnar and Mr Amrani;

(ii) The Claimant repeats his view that it was when Ms Martin found out that he was looking for a position elsewhere within the company that the *"bad evaluations, nagging on me, became annoying"* by Ms Martin commenced and that such behaviour on the part of Ms Martin had nothing to do with her becoming strict;

(iii) The Claimant on more than one occasion when asked repeats that he does not know what the way forward is with regard to Ms Martin but then states *"starting tomorrow I can work with Susana, we are different but it was going well for very months and then went bad and I can say what my opinion is about that".*

(iv) The Claimant's main concern appears quite clearly to be with Mr Asnar and Mr Amrani and their interaction with Ms Martin and her

partner and **not with him** although he is concerned about gossiping behind his back:-

"BV No, I've lead a team before, I think physically move those people from that building to this one, so they don't share the same kitchen etc and talking bad everywhere. That's one thing, second thing she started a relationship with Martyn long before I started, all that secrecy with their relationship, that's the cause for those 4 to start a fight against her, Martyn should be separated shouldn't be influencing the team. 3 people who has a day to day impact in a negative, all very good workers, but the way that combination of people constantly sharing the floor.

RM But they are now with VIP right.

BV In the same office.

RM But that is a different area.

BV We share a kitchen".

"RM Why you intimidated by the VIP guys, so what.

BV Because I lived so many months through this.

BM But then tell them to go away.

BV Because then behind the back it goes on and on and on, all this gossiping".

and then later on

"BV Thanks my issue, I don't believe it can be resolved in a mature way, 11 months this has been going on.

RM But those people now are in VIP team, they are not under our umbrella.

RV I see them every day and what they are doing, in last two years everyone who started has gone, I think that's something to worry about".

(v) The Claimant's only solution with regard to Mr Amrani and Mr Asnar is for them to be moved to another building since otherwise those issues with them would continue:-

"BV So I've thought about that very long, if I could physically move them out from there, simply in another block, no kitchen etc, the problem is goanna go away. If you do what you propose it will be okay for 2 weeks, but I think it will go back".

The interview closed with the Claimant stating *"wanted to hear your point of you, you have the overview of everything, it seems like we are 99% aligned in our view".* This statement was taken by Mr Maman, and relied on by the Respondent, to mean that the Claimant was in agreement with the proposal made that he go back to work with Ms Martin, with appropriate measures being put in place to ensure limited contact between the Claimant and Mr Asnar and Mr Amrani. However, in his evidence to this Tribunal the Claimant stated:-

"I was not convinced at all about the arguments Maman had used so when he brought it up, I shrugged and there was a bit of a silence during which I was

thinking and then I replied that I 99% agree with your philosophy that we have to be mature, that everyone in customer services is entitled to look for promotion but I am not going back to the bullies.

This is what I say. I do not say I agree 99% to go back to the bullies".

I do not accept the Claimant's version of what he meant when he stated *"it seems like we are 99% aligned in our view"*. In my opinion what the Claimant had agreed to was that he could go back to work with Ms Martin, which was the immediate issue of concern since this was the grievance that had been raised, and that the Respondent would put measures in place to control Mr Asnar's and Mr Amrani's visits to CS, so that the 1% the Claimant did not agree with was what Mr Maman was proposing was a potential long term solution, and consequently why the Claimant goes onto state *"the thing is, I don't see myself going back, it will be the same in a couple of weeks"*. It seems to me that at the end of the meeting the Claimant was already more than half way through making up his mind that Mr Maman's proposal was not acceptable to him insofar as Mr Asnar and Mr Armani were concerned.

In evidence to this Tribunal, the Claimant stated as follows:-

"Then on 9th April I had the meeting with Wood she said a few times I had to find a way to work with Susana. I said I don't see this happening. Two weeks later a meeting with Maman is arranged and after thinking of it for two weeks I concluded and said to Maman that I could work with Susana if they took the Camp 2 guys to another building".

"If the effective solution was that Asnar and Armani was off from my floor then 100% when I went into the meeting with Maman I was prepared to go back to work with Susana".

"The only situation was to remove Asnar and Armani from the building"

The meeting was followed up with a letter from Mr Maman to the Claimant dated 25th April 2018. In this letter Mr Maman confirms the outcome of his investigation; namely:-

" • *Susana Martin is the Team Leader of the Belgium/Dutch/Scandinavian Team, as such your reporting line will not change. As Team Leader. Susana is within he right to give input and feedback regarding your performance as part of her role. She is also able to make reasonable requests that should be respected.*

- *A meeting will take place between Susana Martin, Samira Mouhayar (Head of Customer Service Western Europa) and Luis Pinto (VIP Team Manager). The purpose will be to highlight the company expectation around professional conduct from all employees and more specifically, the interaction between VIP and Customer Services. We will ask that both Jose Luis Asnar and Yousri Amrani do not come onto the Support floor unless it is for an urgent work related purpose.*

- *Further to this conversation, a meeting will happen every 2 weeks (initially, we will review to see if the duration needs to be more or less frequent) between Susana Martin, Samira Mouhayar and Luis Pinto to ensure a regular review of the interactions between VIP and Customer Service is taking place".*

and that:-

"I believe the above brings a solution enabling you to return work on Friday 27th April 2018 safe in the knowledge that all relevant managers will be aware of what the expectations is regarding conduct going forward".

The letter also goes to point out that the Claimant *is "to return to work on Friday 27th April 2018"* and the Claimant is entitled to appeal "*in writing within 5 working days of receipt of this letter*" and that "*only issues relating to the specific outcome will be considered as part of the appeal process*".

On the 27th April 2018, the Claimant informed Ms Wood that he is appealing *"the conclusion in its entirety*", that in his view he should continue "*on suspension with full pay"* until the 7th May 2018 and that he had *"started working on a full time line of events with all proof available since I first started on 15.05.2017*".

On the 27th April 2018, Ms Wood confirmed receipt of notice of the appeal and that the appeal must be handed in by 6.00 pm on the 7th May 2018, and ends by pointing out that suspension on full pay only applies whilst the investigation is being conducted and that as such investigation had now been conducted the Claimant was expected back *"on your next shift on the rota*".

On the 30th April 2018, Ms Wood sent the Claimant an e-mail in which she pointed out that he (the Claimant) had failed to attend work, that the Claimant was expected back at work *"on your next shift on the rota*" and that:-

> *"At the moment you are currently absent without leave. If you are absent without leave for 3 days or more it would adversely affect your continued employment with the organisation, I would urge you read clause 10 of your attached contract. We will expect you back in the office for your next shift".*

On the 1st May 2018, the Claimant wrote to Ms Wood stating:-

(i) that the e-mail he had received was confusing to him, that it did not specify a particular date on which he had to return to work, that he interpreted the e-mail to mean that it had been agreed that he was on suspension until the 8th May;

(ii) "*that you now revoked the suspension that I am convinced was granted initially is pure sabotage of my right to appeal and defend myself*" and victimisation;

(iii) that the refusal of his leave request for the 9th to 15th May 2018 was also victimisation since that request could easily be granted;

(iv) that obliging him to meet with Mr Maman was intimidating and that his investigation had been a sham and not done in an independent fashion;

(v) that her sharing of his confidential e-mail with "*Susana who bullies me, Samira who is covering for her and Roni who I feel intimidated by*" showed there was no bullying at work policy in place;

(vi) that Mr Asnar and Mr Amrani "*two bullies for several months and ongoing"* had got promoted instead of being disciplined;

(vii) that *"now you threaten to sack me for being a victim of bullying? Unbelievable all of this because I mentioned that I might have to take all of this to court*";

(viii) the e-mail was not his appeal to the investigation since:-

- "*I need much more timer for that and you will receive my appeal on the 7th May before 6 pm although only 5 working days is a ridiculously short time for an appeal as I have to go through thousands of e-mails".*
- *"I already assured you some days ago that I will definitely need every day till 8th May to go though thousand of e-mails for a proper documented appeal. That you now revoked the suspension*

that I am convinced was granted initially is pure sabotage of my right to appeal and defend myself".

(ix) That, significantly enough:-

"During the time of preparing my appeal I consider myself to be on extended suspension until 8th May. On that date I will go on the requested annual leave till the 16th May. Till then I definitely can't go back to all the bullies without an acceptable solution it will be worse than ever and the risk of revenge is 100%".

I find the Claimant's reply to Ms Wood's e-mail of the 30th April 2018, to be bizarre not only as to content but also as to the arguments used to justify his stance/actions on various matters. This, the Claimant asserts, may be explained by the following admissions given by the Claimant when giving evidence:-

"I started to drink heavily around the time of my second sick note. Around the end of April. I was drinking three litres of wine a day. It could affect my perception of what was happening".

"Quite possible that my perception of reality was distorted by my drinking".

"This is my e-mail of the 1st May. From this point onwards I am going to reply to you that my answers were based on confusion upon confusion. Confusions based on confusions based on confusions".

On the 1st May 2018, Ms Wood informed the Claimant that he was expected at work the next day, that she had received the Claimant's leave request and *"it is reasonable to reject some of the days requested due to the overall availability of team members"* and that if he did not return to work the Respondent reserved its right to enforce clause 10 of the employment contract.

On the 2nd and 3rd May 2018, the Claimant failed to attend work and therefore HR personnel attempted to get into contact with him via telephone and e-mail.

On the 4th May 2018, the Claimant e-mailed HR pointing out that *"I clearly mention that I need a lot of time to prepare my appeal"*, stating that he is getting conflicting messages from the company and asking what his status with the company was, and ending up stating:-

"In the last case I have already pointed out that I want suspension till 8th May, then annual leave till 16th May. This gives both me the necessary time to write an appeal and the company after that time to investigate it properly. That seems quite on honest deal to me".

That same day Ms Wood replied to the Claimant pointing out that:-

(i) the appeal is against the decision made by Mr Maman "and why you do not feel it is a workable solution";

(ii) it was neither practice or policy for an employee to be on suspension for the purpose of making an appeal;

(iii) his leave was only granted from the 10th to 15th May;

(iv) he was still employed with the Respondent and currently absent without leave; and

(v) that he was expected at work the next day and that if he failed to attend it could affect his continued employment.

I find the wording of this e-mail perfectly simple and clear to understand.

On the 4th May 2018, the Claimant replied to Ms Wood stating that *"I am now even more confused than before re the appeal process"* and asking that she provide him with scans of the terms and conditions regarding the appeal. I find it interesting that in this e-mail the Claimant totally disregards dealing with the two issues which in my view should have been uppermost in this mind; the need to attend work the next day and his leave request. It indicates to me that the Claimant had already decided that he was not going back to work and was going to Belgium during the period he desired and that therefore the rest of the e-mails that followed served very little purpose.

The Claimant failed to attend work on the 5th to 7th May inclusive. On the 7th May the Claimant e-mailed Ms Malmgren and stated that:-

(i) he wished *"to appeal against to outcome of the bullying investigation based on the multitude of complaints I have been writing since 24th July last year"*;

(ii) he is "*dismayed that the investigation though is based only on my complaint from 6th April this year*";

(iii) the outcome of "*your investigation simply is that I should go back to work as if nothing ever happened*";

(iv) he wished to report Ms Wood and Ms Horwood for sending him confusing and misleading information and for refusing to send him copies of documentation requested;

(v) that:-

> "*So what then with my loss of income of 18 days of sick leave at half pay? "My stress related anxiety" was a direct consequence of the bullying and that loss of income is a punishment for me being victim of bullying. Now I have been put on leave without pay although I was made to believe that my suspension would continue. The company is doing its best apparently to make me a criminal instead of a victim. I'm the bad guy now apparently.*
>
> *As part of my appeal, I have been preparing a timeline of all relevant events and communication regarding my bullying. Unfortunately, Danielle and Emma are now refusing to send me copies of certain documents I asked for my appeal and I don't want to send an incomplete timeline. Under the Data Protection Act the requested information should have been provided so the company is breaching the law now"*
>
> and
>
> *"Whilst my appeal might now be considered without me being given an honest chance to fully prepare it, I think that the way forward is to let things settle a bit and then organise a meeting in which progress can be discussed. As informed before, tomorrow morning early I leave for annual leave and will be back in Gibraltar 16th May. I am willing to meet on that day with HR. I will have spent some quality time with my family in Belgium then far away of all the present issues so could come to a meeting with a fresh mind".*

On the 8th May 2018, the Respondent wrote to the Claimant informing him that clause 10 of his contract had been invoked as he had failed to attend work on the 27th to 30th April, the 2nd and 3rd May and the 5th and 6th May and that consequently his employment was terminated as from the 8th May. The letter includes the following paragraph:-

"As per clause 10.1 of your Employment Contract (which has been highlighted to you on more than one occasion) 3 days or more of unauthorised absence is grounds for gross misconduct which can lead to your dismissal without notice or pay in lieu of notice. Therefore, you have left us with no option but to invoke this clause and terminate your contract".

On the 11th May 2018, the Claimant wrote to the Respondent stating, amongst other things, that:-

"From a legal point of view the Gibraltar Employment Act states that an employee cannot claim to be unfairly dismissed if he was not continuously employed for a period of not less than 52 weeks. But it also states that the 52 weeks requirement is voided when the dismissal of an employee by an employer if the reason for it was that the employee alleged that the employer had infringed statutory right. The statutory right of all employees not to be subjected to bullying and victimisation is the one I mentioned before, I'm not a lawyer but I think this is clear enough. The Gibraltar Employment (Bullying at Work) Act 2014 doesn't even have this 52 weeks requirement.

For all of those reasons I appeal the termination of Employment and repeat my proposal to meet on 16.5.2018 when I will be back in Gibraltar. I also demand that my appeal against the Bullying investigation Outcome is properly investigated. Obviously, there will be no need to meet if I will still be sacked, for that I ask you to review the decision most urgently. I propose "leave without pay" for the days you claim I have not been authorised but I felt forced to take off. If the dismissal is not fully revoked then there is no reason for me to return to Gibraltar by 16.5.2018 and I will rebook my return flight at a later date so I can spend some extra time with my family and friends in Belgium".

In none of the correspondence sent by the Claimant to the Respondent before the letter of termination of employment does the Claimant state that the reason he did not return to work after the 27th April 2018 was that he reasonably believed that there was a risk of serious and imminent danger to his mental health (be this as a return of his stress related anxiety or otherwise) if he returned to work and that he could not avert the danger on returning to work. As from the 27th April 2018, the only reasons given in correspondence for not returning to work was that (a) he had been confused by the Respondent's e-mails and thought that he was still under suspension and (b) that he required to be off work in order to prepare his extensive appeal which necessitated him going through thousands of bits of documentation and that he wished to take his 8th to 15th May leave as requested. In some of these e-mails after the 27th April 2018, the Claimant does refer to eleven months of bullying but he does not expressly state that he was refusing to go back to work because of the bullying, whether this be by Ms Martin or Camp 2 members. In such correspondence he refers to the bullying as being the reason for the appeal and not the reason for not going to work. One would have reasonably expected the Claimant to have stated, not in the legalistic language of the section of the Act but in basic layman's terms, that the reason for his refusing to go back to work was that he feared a mental breakdown if he returned to work with all or any one of Ms Martin, Mr Asnar or Mr Amrani being there. That he did not do is to his detriment but can we infer this from his words or actions? In his evidence to the Tribunal he stated:-

"I refused to return to work because I wanted to work on my appeal and also because of my mental health".

With regard to Ms Martin, it is my opinion that there is no evidence from which it can be inferred that the Claimant did not wish to return back to work because of her conduct towards him. Notwithstanding that after the 31st January 2018, the Claimants complaints where specifically and/or mainly directed at Ms Martin's conduct towards him, the evidence is that the Claimant was prepared to continue to work with her, albeit that at his meeting of the 9th April 2018 he informed Ms Wood

that he could not do so. Thus, in the minutes of the meeting between Mr Maman and the Claimant it is stated that the Claimant confirmed:-

> *"starting tomorrow I can work with Susana"*

and in his evidence to the Tribunal, the Claimant stated that:-

> *"when I went into the meeting with Maman I was prepared to go back to work with Susana"*

and in his witness statement, the Claimant stated:-

> *"Even at this stage if the Camp 2 bullies had gone to another building, I would have given Susana another chance and gone back to work"*

The upshot of the above is that in my opinion there is no evidence to indicate, let alone prove, that the reason for the Claimant's refusal to return to work after the 27th was that he had a reasonable belief that he would be in serious and imminent danger (whether this be stress related anxiety or otherwise) as a result of having to work with Ms Martin.

With reference Mr Asnar and Mr Amrani, I find that the position is somewhat more complicated. As stated earlier in this judgement, whilst the Claimant makes generalised comments after the 30th January 2018, about being bullied by the Camp 2 members there are no material specific instances given, and such comments as there are appear to relate to pre-December 2017 events. Notwithstanding this being the case, the Claimant nevertheless concentrates on Mr Asnar and Mr Amrani in his meeting with Mr Maman and states that the solution to his problem is to move both these individuals to a different building. Assuming for the moment that Mr Maman's failure to remove Mr Asnar and/or Mr Amrani from the building as the Claimant desired/demanded led the Claimant to believe there was a risk of a serious and imminent danger to his mental health if he returned to work, the question that firstly arises is whether objectively viewed that belief was reasonably held.

Bearing in mind that:-

(i) at this point, in the Claimants own words his mental state was that *"I did feel better but it had not gone away"*;

(ii) neither Mr Asnar or Mr Amrani worked any longer on the customer services floor;

(iii) no specific incidents which could amount to bullying by either man had been raised by the Claimant for many months;

(iv) the heads of Customer Services and VIP were going to be addressed on the need for appropriate professional conduct in the interaction of their staff between departments;

(v) both Mr Asnar and Mr Amrani were going to be asked , and indeed were asked, not to go to the customer services support floor unless it was for an urgent business related purpose;

(vi) meetings would be taking place every two weeks to ensure that there were no incidents; and

(vii) individuals had been put on notice of disciplinary proceedings taking place if they did not conduct themselves appropriately,

I am of the opinion that the ordinary man in the street would not have concluded in the indicated circumstances that the Claimant's belief that he would be in placed in serious and imminent danger if he returned to work with Mr Asnar and/or Mr

Amrani was reasonable. Even assuming that the Claimant may have feared being subjected to a bullying incident at some point in the future there was little reason to believe that such an incident would or could occur imminently; indeed even the Claimant in his meeting with Mr Maman thought that any incident was two/three weeks down the line since he stated *"it will be ok for two weeks but I think it will come back*". I am of the further opinion that even if it was reasonable to believe that there was a serious and imminent risk of danger to the Claimant on returning to work with Mr Asnar and/or Mr Amrani, the Claimant could have been expected to avert the danger by ensuring that he simply walked away from either or both Mr Amrani/Mr Asnar when, and if, encountering them in the kitchen or other shared facilities within the building in question or if they came to his work place.

Even if I am wrong in all of the above, the fact remains that the Claimant was required but failed to inform his employer adequately or at all that the reason for his not returning to work after the 27th April was that he genuinely believed that he would be putting himself at risk of serious and imminent danger in the sense of a mental breakdown/stress related anxiety attack if he returned to "the bullies". It is the case that in his address to the Tribunal the Claimant stated as follows:-

> *"Initially I assumed wrongly that I was on suspension on full pay, when the Respondent finally said you have to go back you are mistaken, the very first time I was made to understand I was not on suspension, that I had misread the e-mail the first thing I do I reply ending with I will not return to the bullies the risk of revenge is 100%. I could not have made it clearer what my reason where for not returning to work".*

In making such a statement the Claimant's was referring to his e-mail of the 1st May 2018. This e-mail is over two pages long and deals with a whole series of matters/issues/complaints. In the penultimate paragraph of this e-mail the Claimant states as follows:-

> *"During the time of preparing my appeal I consider myself to be on extended suspension till 8th May. On that date I will go on the requested annual leave till 16th May. Till then I definitely can't go back to all the bullies without an acceptable solution, it will be worse than ever and the risk of revenge is 100%".*

I do not accept the Claimant's contention that this statement was clearly designed to bring to the attention of the Respondent that he believed there was a serious and imminent risk to his mental health if he returned to work with Mr Asnar and/or Mr Amrani. Yes the Claimant does state that he was not going back to work until the 16th May 2018 and that his reason for so doing was that he feared revenge on the part of all the bullies. But why would one use the words "*Till then I definitely can't go back*"?. These words imply that after the 16th May he could return to work with all the bullies. It was not for the Respondent to try and figure out what the Claimant was saying or meant to say as it was the responsibility of the Claimant to communicate clearly to the Respondent the circumstances of serious and imminent danger. In my opinion he did not do so and what is clear from this statement is that the reasons for not returning to work are working on the appeal and then going on leave. I do not therefore accept that the Claimant in this or any other correspondence informed the Respondent in plain or clear language that he could not return to work because he believed there was a risk of serious and imminent danger to his mental wellbeing.

Conclusion

The outcome of all of the above with regard to each of the claims brought by the Claimant is as follows:-

(a) Bullying:-

(i) the allegations of bullying brought against Messrs Asnar, Amrani, Nouri and Ringleberg whether considered on an individual or a series of connected acts are dismissed;

(ii) the allegations of bullying brought against Ms Martin whether considered on an individual or a series of connected acts are dismissed;

(b) Victimisation – the various allegations of victimisation on the part of the Respondent are individually and collectively dismissed;

(c) Unfair Dismissal – the claim that the Claimant was automatically unfairly dismissed contrary to section 65B(1)(d) of the Employment Act is also dismissed.

In the circumstances of the above, this case in insofar as this Tribunal is concerned is at an end.

Joseph Nuñez
Chairman

9th December 2021