**Case Number: 3201150/2018**

**RM**

# THE EMPLOYMENT TRIBUNALS

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| **Claimant:** | **Mr J Coote** |
| **Respondents:** | **(1) Britelec Network Services Ltd**<br>**(2) Mr Richard Tuff** |
| **Heard at:** | **East London Hearing Centre** |
| **On:** | **18, 19, 23, 24 July 2019 and 21 August 2019 (in Chambers)** |
| **Before:** | **Employment Judge Burgher** |
| **Members:** | **Mr NJ Turner OBE**<br>**Mr D Ross** |

**Representation**

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| Claimant: | Ms Meenan, Pro Bono Pupil Barrister |
| Respondent: | Mr Haines, Legal Consultant |

# JUDGMENT

1. **The Claimant's claims for unlawful deduction of wages and accrued holiday pay succeed to a limited extent.**

2. **The Respondent failed to provide the Claimant with a written statement of terms and conditions of employment.**

3. **The Claimant's claims for direct disability discrimination, discrimination arising in consequence of disability, failure to make reasonable adjustments and unlawful harassment fail and are dismissed.**

4. **The Claimant's claims for detriment and dismissal arising from making a protected disclosure, automatic unfair dismissal pursuant to section 104 of the Employment Rights Act 1996 and failure to pay mileage are dismissed on withdrawal by the Claimant.**

5. **The Respondent is ordered to pay the Claimant the total sum of £1,503.51**

**in respect of his successful claims.**

# REASONS

1. At the outset of the hearing the issues were defined as set out below.

Disability

2. The Respondent accepts that the Claimant is a disabled person within the meaning of S.6 of the Equality Act 2010 by reason of dyslexia. The relevant time period for the purpose of this claim is July 2017 to February 2018.

3. The Respondent denies that it knew or ought reasonably to have known that the Claimant was disabled for the first two or so weeks of the Claimant's employment.

Direct discrimination contrary to S.13 of the Equality Act 2010

4. Did the Respondents treat the Claimant less favourably than they treated, or would treat, others because of the Claimant's disability contrary to s.13 and s.39(2) of the Equality Act 2010? The Claimant relies on Luke McEvoy, the Claimant's fellow apprentice, as a comparator. The acts of direct disability discrimination relied upon are:

4.1. Refusing the Claimant any contribution to the running of his vehicle, including the fuel card.

4.2. Asking the Claimant to work excessive hours and then threatening to dismiss the Claimant.

Discrimination arising from disability s15 of the Equality Act 2010

5. Did the Respondents treat the Claimant unfavourably because of something arising in consequence of the Claimant's disability, contrary to s.15 and s.39(2) of the Equality Act 2010.

6. The Claimant makes the following allegations:

6.1. Refusing the Claimant any contribution to the running of this vehicle, including a fuel card;

6.2. On 19 September 2017, after arriving back from holiday the Second Respondent criticised the work that the Claimant had done;

6.3. Verbally abused the Claimant including calling the Claimant a "thick stupid cunt";

6.4. On 8 October 2017, the second Respondent criticising the Claimant to not knowing where he was working the next day;

6.5. On 17 October 2017 the Second Respondent verbally abusing the Claimant including; shouting at the Claimant and calling him a "thick stupid cunt";

6.6. On the 14 January 2018, refusing the Claimant work and payment for the next day (15th of January), for being unable to get to work;

6.7. On 15 January 2018, not paying the Claimant travel expenses, and all of the basic salary;

6.8. Between 15 and 21 of January 2018 not paying the Claimant his expenses and all basic salary due to the Claimant not being able to complete timesheets;

6.9. On 18 January 2018, verbally abusing the Claimant when he did not pick up the phone whilst driving including; calling him selfish and useless. Asking the Claimant to work excessive hours and then threatening to dismiss the Claimant;

6.10. On 22 January 2018, the Second Respondent being verbally abusive including telling the Claimant that:

6.10.1 His request for money was his own problem (this relates to timesheets);

6.10.2 Criticising the work done by the Claimant that afternoon and swearing at him (this relates to the speed of the Claimant's work);

6.11. The Claimant's dismissal on 22 January 2018;

6.12. On 23 February 2018, providing an unfavourable reference for the Claimant despite only having been asked for dates of employment (allegedly based on the Claimant's disability). The Claimant subsequently withdrew this aspect of his claim.

7. A key dispute linking these issues concerned whether the Claimant became disaffected in his work due to constant bullying and harassment by Mr Tuff or whether he had lost interest and motivation in continuing to work in the role.

8. If any of the matters specified in paragraph 6 above are established, whether the Respondent can show that the treatment is a proportionate means of achieving a legitimate aim.

9. Did the Respondents engage in the conduct contrary to s.26 of the Equality Act 2010? Did it have the purpose or effect of:

9.1. Violating the Claimant's dignity;

9.2. Creating an intimidating hostile, degrading humiliating, or offensive environment for him;

9.3. Was it related to disability?

10. All the allegations outlined above in relation to discrimination arising in consequence of disability apply.

Failure to make reasonable adjustments

11. Did the Respondent apply the following PCPs to the Claimant:

11.1. PCP 1, Requiring the staff to identify numbering on cables?

11.2. PCP 2, The approach it took to giving feedback?

11.3. PCP 3, Requiring staff to fill-in their own timesheets?

12. The Respondent accepts that it applied PCP 1 and PCP 3 but does not accept it applied PCP 2.

13. The Respondent does not accept that any of the alleged PCPs placed the Claimant at a substantial disadvantage in comparison with persons who are not disabled.

14. In respect of PCP 1 and PCP 2, the Claimant states that insofar as his performance being slow, this was a result of his disability and the continuous pressure that the Respondent placed on him which exacerbated his existing condition.

15. In respect of PCP 3, the Claimant states he was required to fill-in his own timesheet and as a result of being unable to fill it in by himself he missed the cut-off date for payment.

16. The following were suggested as reasonable adjustments.

16.1. In respect of PCP 1, allowing the Claimant more time to differentiate thus, allowing him to ensure that he has identified the correct numbers. The additional time period of 15 minutes was suggested.

16.2. In respect of PCP 2; adapting the way in which feedback was provided such that any negative comments would balance through constructive and supportive feedback and offering support and coaching in informal catch ups to make sure the Claimant was confident and supported in his tasks.

17. In respect of PCP 3 it was suggested that:

17.1. Meetings be held with the Claimant to explain the process that was changing and what was required of him before sending an email;

17.2. Providing a clearer template of the timesheet (bigger font and spacing);

17.3. Assisting the Claimant when filling in the timesheet;

17.4. Checking the Claimant's time to see when it was submitted to ensure it was correctly filled in before it was sent to accounts.

18. In respect of each of the Claimant's allegations of failure to make reasonable adjustments the Tribunal is required to consider whether the Respondent knew or could reasonably expected to know that the Claimant had a disability and whether the Claimant was placed at a substantial disadvantage in comparison with persons who were not disabled.

Time limits

19. The Tribunal will consider whether any claim is outside the primary time limit and take into account the extension arising from early conciliation provisions.

20. Consideration will be given to whether any of the conduct relied on by the Claimant constitutes conduct extending over a period within the meaning of section 123 (3)(a) of the Equality Act 2010, ending with the primary limitation period; and/or

21. Is it just and equitable to extend time for bringing the complaint?

Breach of contract

22. Following further consideration of the evidence the Respondent sought to resile from its concession it had made at the earlier hearing that the Claimant's contract was a contract of apprenticeship.

23. If there was a contract of apprenticeship did the Respondent unlawfully terminate the Claimant's contract of apprenticeship?

24. If there was a contract of employment did the Respondent wrongfully dismiss the Claimant

S.104 Employments Rights Act 1996 claim

25. The Claimant withdrew his claim for automatic unfair dismissal. Therefore his claim for automatic unfair dismissal contrary to s.104 of the Employment Rights Act 1996 is dismissed on withdrawal.

Protected disclosure

26. On the second day of the hearing the Claimant, following evidence, the Claimant withdrew his claim for detriment and dismissal for making a protected disclosure. This claim is therefore dismissed on withdrawal.

Unlawful deductions of wages

27. Did the Respondent make deduction from the Claimant's wages in the sum of £1,969.39? The Claimant specified his claim in this regard in the schedule of loss.

28. Did the Respondent unlawfully deduct £163.95 from the Claimant in respect of tools and equipment?

Breach of contract

29. Whether the Claimant is entitled to a payment in respect of mileage. The Claimant withdrew his claim in this regard on the third day of the hearing. This claim is therefore dismissed on withdrawal.

Accrued holiday pay

30. The Claimant claims 4.31 days accrued holiday pay. This is dependent on what the Tribunal consider to be the commencement date of the Claimant's employment.

Written particulars

31. The Respondent accepts that it did not provide the Claimant with a written statement of particulars in accordance with section 38 of the Employment Act 2002.

**Procedural issues**

32. At the start of the hearing the Respondent applied to rely on a supplementary bundle of documents, including text messages, that had only been disclosed to the Claimant the day before. Ms Meenan on behalf the of the Claimant objected to the late disclosure. She stated that the Claimant is dyslexic and had limited time to review the additional documentation. She also stated that a number of the additional documents were irrelevant. The Respondents asserted that the additional documents were relevant to show the nature of the relationship between the Claimant and the Second Respondent. The Respondents asserted that given that a number of the witnesses it sought to attend had not agreed to do so it was appropriate for the documents to be admitted.

33. The Tribunal considered the application and concluded that it was appropriate to admit the supplementary documents. The documents were relevant to the hours the Claimant worked and a contemporaneous record of communication between the Claimant and the Second Respondent. It was the first day of a four day hearing which was going to be adjourned over the weekend and recommence the following Tuesday and the Claimant will be in a position sufficient time to consider the documents and give instructions. The Tribunal directed that the Claimant was not cross-examined on any of the new documents before he had sufficient time to properly consider them.

34. Once the Tribunal had concluded that the supplementary documents would be admitted, the Claimant applied to admit further documents to address them. This was allowed.

35. Further documents were permitted on subsequent days following applications by both parties including text messages, phone records and information sheets on dyslexia. The additional disclosure was permitted on the grounds of relevance and the lack of prejudice to the parties in addressing the additional documentation. Some

documentation was produced during the cross examination of Mr Tuff and the Tribunal permitted the Claimant to be recalled to give evidence on the new material.

**Evidence**

36. The Claimant gave evidence on his own behalf. He had prepared a witness statement dated 28 March 2019 and a supplementary statement on 10 April 2019 in rebuttal to Mr Tuff's statement of 28 March 2019.

37. Mr Richard Tuff gave evidence for himself and the First Respondent. Mr Tuff also provided the Tribunal with a demonstration of terminating data cables, using the necessary equipment to seek to establish that it was not reasonable for only 2 termination tests to be done in a period of 1 hour and 20 minutes, this was one of the matters to be considered in the Claimant's claim for reasonable adjustments.

Witness orders

38. The following witnesses appeared under witness orders made on behalf of the Respondents:

38.1 Mr Colin Nicholls, Sole Trader.

38.2 Mr Luke Hyams, Contract manager North Essex Electricals Ltd.

38.3 Mr Robert Rushforth, On site supervisor, North Essex Electricals Ltd.

39. The Tribunal was also referred to relevant pages of a bundle of nearly 500 pages including the additional documentation that was permitted to be adduced.

Assessment of witnesses

40. The Claimant is dyslexic and this has an effect on his processing skills when under pressure. The Tribunal recognises that giving evidence can be a very stressful situation and we ensured that the Claimant had time and opportunity to properly answer questions. Mr Haines, representative for the Respondents, asked questions of the Claimant in a patient and respectful manner.

41. Notwithstanding the Claimant's disability it was clear that there were significant inconsistencies with what he sought to advance to the Tribunal and the contemporaneous written records that were referred to. The Claimant's credibility was demonstrated to be wanting in respect of some of the answers he gave to the Tribunal.

42. Mr Tuff gave evidence in a frank and honest manner. He was clear in his recollection of key events. He emphasised that it was his belief that the Claimant had contrived a case to seek payments, advised by his mother, who works in employment law.

43. None of the witnesses who attended under a witness order were happy to attend the proceedings and they made this clear to the Respondents and the Tribunal. They were entirely disinterested. Whilst Mr Nicholls and Mr Hyams had

produced witness statements they did not wish to attend to the Tribunal due to other work commitments. We do not find that their evidence was partisan and limited evidence they gave was reliable and given to the best of their recollection. There was no reasonable basis to suggest that they had made up their evidence to support the Respondents.

44. The evidence of Mr Rushford was based on an email to Mr Tuff dated 27 February 2019 outlining his recollection of events. He stated that this email was created by the Respondents' representatives following telephone discussions with him. Mr Rushford stated that he reviewed the email, made comments and then approved it. He agreed with the contents. We conclude that where the email records matters that Mr Rushford had first-hand knowledge of we consider it to be reliable. However, we considered his evidence in respect of matters that he says were relayed to him by others had very limited probative value.

45. The Claimant's mother, Mrs Jill Coote, attended the Tribunal for the first three days of the hearing and no evidence was heard from her despite the evidence of Mr Tuff and Mr Nicholls that referred to her in support of the position that Mr Tuff did not harass the Claimant on 17 October 2017. Her lack of evidence in this regard was conspicuous, especially in the context of the Claimant's supplementary statement that sought to rebut what Mr Tuff had stated in his witness statement in this regard.

**Facts**

46. The Tribunal has found the following facts from the evidence.

47. The First Respondent is a company incorporated in 1997. It undertakes, amongst other things, telecommunications installations and network cabling services.

48. The Second Respondent, Mr Richard Tuff, is a director the First Respondent.

49. The First Respondent's registered office business is located next door to the Claimant's home address and conversations took place from time to time between Mr Tuff and members of the Coote family.

50. In July 2017 Mr Tuff informed the Claimant's mother, Mrs Coote, that he needed a couple of apprentices. Mrs Coote informed Mr Tuff that the Claimant might be interested in this. The Claimant subsequently had a discussion with Mr Tuff and undertook two trial shifts on 13 and 14 of July 2017 amounting to 14.25 hours work.

51. The Claimant passed these trial shifts and was offered a tripartite apprenticeship agreement on 17 July 2017 between him, the First Respondent and Remit, an apprenticeship training provider.

<u>Contract</u>

52. The apprenticeship agreement was stated as being of 13 months duration with a planned end date on 17 August 2018. It provided for attendance and study time to be between 8am and 4pm Monday to Friday. The apprenticeship agreement was subject to a minimum of 30 hours a week. There was no evidence of specific study days, if any, that the Claimant was able to take. The qualification to be gained was

Infrastructure Technician Level 3. The agreement required the Claimant to be, amongst other things diligent, punctual and respectful to colleagues and he was required to observe the employer's terms and conditions of employment. However, the First Respondent did not provide the Claimant with any terms and conditions of employment, despite this being a central requirement of the apprenticeship agreement.

53. The apprenticeship agreement required the Respondent to advise Remit of any issues that arise with the apprenticeship immediately, including but limited to, the apprentice's conduct, timekeeping, lack of motivation, sickness, safeguarding issues.

54. The apprenticeship agreement was stated as being incorporated into and not replacing the written statement of particulars issued to the individual in accordance with the requirements of the Employment Rights Act 1996. The apprenticeship agreement was also stated to be treated as being a contract of service and not a contract of apprenticeship.

55. Also, on 17 July 2017, the Claimant signed a 48-hour week opt-out agreement under the Working Time Regulations. The Claimant agreed to work, when necessary, in excess of 48 hours per week. The opt-out agreement could be terminated at any time, subject to giving three months' notice in writing.

56. The Claimant had an induction on 17 July 2017 with Mr Tuff. Representatives of Remit were also in attendance. Mr Tuff made it clear to the Claimant, and the other apprentice, Mr Luke McEvoy, that the contract of employment was conditional on the Claimant obtaining an Electrotechnical Certification Health and Safety assessment (ECS) card as without an ECS card the Respondent would not have sufficient work to give them. Mr Tuff sent an email dated 17 July 2017 notifying the Claimant, and Mr McEvoy, that they would have to sit and pass the test for the ECS card. The email stated that:

> *'the test is HARD as it is mostly electrical and a bit about data…'*

57. The conditional nature of the contract of employment was also confirmed in a text message from Mr Tuff to the Claimant in response to the Claimant asking whether he was required to work. Mr Tuff replied 19 July 2017 stating:

> *'No James I can't get you on any sites without the appropriate card. That's why I booked the ECS test for you and Luke Monday afternoon…'*

58. We do not find that the Claimant is credible in his evidence given before the Tribunal that his employment was not conditional on receiving the ECS card. The Claimant's ET1 specifically states that he understood that his contract of employment was conditional on receiving the ECS card.

59. The Claimant also states in his ET1 that he received the ECS card on 13 July 2017, but this is incorrect. The Claimant sat the ECS test for the first time on 24 July 2017 and was informed by letter dated 24 July 2017 that he had failed. He sat the test again on 28 July 2017 and was informed by letter on the same date that he was successful. He then had to apply for the card and get it sent to him before he could attend sites. We conclude that the Claimant applied for and received the ECS card

the following week in order to commence work with the Respondent on 7 August 2017.

60. There was no issue concerning whether the Claimant needed reasonable adjustments to sit and pass the ECS test to accommodate his dyslexia.

61. The ECS card that the Claimant obtained had 'Apprentice' written in big red letters on it. The Claimant was required to show this to site supervisors to be admitted on sites. This was an additional matter that ultimately undermined the credibility of the Claimant. He had initially maintained that he made a protected disclosure to Remit, namely that he was told by Mr Tuff to conceal that he was an apprentice to site managers. This would not have been possible as he would not have been able to be admitted to sites without showing his ECS card which had apprentice written in big red letters on it. The Claimant understandably withdrew his protected disclosure claim.

62. In the separate learning agreement completed by Remit and signed by the Claimant on 31 August 2017, the Claimant declares that he has been issued with a contract of employment. This declaration was incorrect. The Claimant had not been provided with a contract of employment. However, the learner agreement specifically states that the learner could not proceed with an apprenticeship until both the apprenticeship agreement and contract of employment had been issued to the learner.

Disability

63. The Claimant relied on an assessment of dyslexia undertaken when he was 8 years old as medical evidence before the Tribunal. He referred to additional documentation produced by the Mayo Clinic confirming that dyslexia is a lifelong problem. The Mayo Clinic information also states that children can learn skills that improve reading and develop strategies to improve school performance and quality of life. The Mayo clinic goes onto sensibly recommend that adults with dyslexia seek evaluation and instructional help and ask about additional training and reasonable accommodations from an employer.

64. The Claimant maintained in his disability impact statement that Mr Tuff knew that he suffered from dyslexia prior to his employment as he was a family friend of his parents and this was discussed. In his evidence before the Tribunal the Claimant maintained that he told Mr Tuff of his dyslexia on his trial shifts on 13 July 2017 and 14 July 2017. However, we prefer the evidence of Mr Tuff on this point. Mr Tuff states that the Claimant informed him of his dyslexia on one occasion, around 26 August 2017, when the Claimant worked in Cambridge with him. The Claimant stated that he had dyslexia and could get flustered and make mistakes. Mr Tuff explained that if the Claimant could not read and record the numbers correctly it would be unlikely that he would be able to do his job as it was essential that cables were identified correctly as the systems would not work otherwise.

65. Mr Tuff then took his time to explain to the Claimant good coping strategies when labelling boxes and wires in clear writing and underlining numbers so that they could be told apart. The Claimant accepted that the advice given by Mr Tuff was *'very helpful'*. We find that the coping strategies worked and there were no further

numbering problems identified by the Claimant. As far as Mr Tuff was aware there was no longer any problem in this respect. There were no complaints about the Claimant's speed of work or concerns with the Claimant's competence until the end the relationship.

66. The Claimant's disability impact statement stated that his impairment was well managed but increased due to continual unnecessary stress that caused him to fail to apply coping mechanisms. However, there is no evidence before the Tribunal that following the 26 August 2017 discussion when the Claimant was unable to read numbers or properly identify cables. We accept Mr Tuff's evidence that the suggested coping strategies had succeeded.

67. In the learner agreement that the Claimant signed on 31 August 2017 he states that he had dyslexia in response to a question as to whether he has a disability. He also stated that he had made his employer aware of his disability. In response to the question as to whether his declared disability requires any reasonable adjustments to enable him to achieve apprenticeship training program the answer provided is N/A.

68. On 3 January 2018 the Claimant was recorded by Remit as having functional level in maths and English to be exempt from further training in order to progress to undertake the detailed technical training given by Remit. There was no suggestion in the documents that the Claimant needed help for doing this training due to his dyslexia or otherwise.

69. In the Remit training records dated 3 January 2018 Mr Tuff records:

> *James is making progress, he is willing and his timekeeping is good. His communication skills are extremely frustrating though and waiting for an answer to a simple question is actually painful, I need to see improvement in this area and also taking ownership of his responsibilities and driving on with them and making me feel he is understanding caring and in control and a valuable asset'*

70. We note that during cross-examination the Claimant tended to pause and reflect in his answers to questions leading to time passing for a response which could be consistent with Mr Tuff's observations. Ms Meenan contended that the comments of Mr Tuff in this document were indicative of his impatience and lack of consideration for the Claimant's disability. However, we considered the overall comments and the training context that they were given. Further, Mr Tuff's observations related to the Claimant's communication skills which was not a specific issue before us and this did not not extend to the allegations concerning the speed or quality of the Claimant's work, which were the subject matter of the complaints before us.

71. Following consideration of the evidence of disability we find that there was an element of exaggeration regarding his condition expressed to the Tribunal. What the Claimant conveyed to the Tribunal about his needs was not what he was conveying to Mr Tuff following 26 August 2017 or to Remit in meetings on 31 August 2017, 24 November 2017 and 3 January 2017. The Claimant did not make any requests for help or assistance, as recommended by the Mayo Clinic and there were no expressed concerns that he could not do competently undertake his work.

Working relationship with Mr Tuff

72. At the start of his employment the Claimant asked for a company vehicle and Mr Tuff said he would look into it. The Respondent did have a spare company van and Mr Tuff enquired about Claimant's driving history. The Claimant had points on his licence and the cost of insuring the Claimant on the van was prohibitive. Mr Tuff explained this to the Claimant at the time and the Claimant understood this. The other apprentice employee, Luke McEvoy was able to use a company vehicle and it is evident that his driving record did not prevent him being insured on it.

73. The Respondent provides fuel cards in respect of company vehicles only, no employee is entitled to a fuel card for use of their own private vehicle.

74. The Claimant asserts that within a few weeks of starting work Mr Tuff would often coerce him to work excessive hours, work at weekends and threaten him with the sack if he did not do so. Mr Tuff denies saying this on that occasion or generally. We observe that at the start of his employment the Claimant was regularly being paid for working in excess of 44.5 hours per week but this reduced to less than 40 hours per week for the September/ October 2017 period.

75. Having balanced the evidence we find that the Claimant was willing and engaged in his work at the start. There was no recorded complaint made by the Claimant to Remit about Mr Tuff's alleged behaviours recorded in the learning agreement records of 31 August 2017, 24 November 2017 or 3 January 2018 and there was no contemporaneous documentation, whether text message, email or otherwise to support his allegation. We accept Mr Tuff's evidence that in the first few weeks of work the Claimant had a positive work attitude and Mr Tuff appreciated this and the Claimant was being paid for the additional hours worked. We do not accept that the Claimant raised any concerns about working excessive hours or that he was threatened with dismissal if he did not do so.

76. The Claimant was not entitled to be paid for travel time to and from work. The Respondent only paid workers for travel to and from their home to different sites where the total travel time exceeded 2 hours a day to and from sites he was paid by the Respondent for this additional time.

77. The Claimant alleges that on 19 September 2017 Mr Tuff had just returned from holiday and was aggressive towards him. There was a falling out between the two of them on this date. Whilst they were on site Mr Tuff asked the Claimant where the drawings and the cable rods were. The Claimant answered dismissively that he did not know. Mr Tuff reiterated that the drawings where fundamental to the Respondent's business as without them they would be lost and they would not be able to undertake the required work. He reminded the Claimant that the drawings should always be securely locked in the data cabinet or taken to the van.

78. The Claimant maintained a dismissive and disinterested response as to the whereabouts of the drawings. Mr Tuff was frustrated by this and there were raised words and swearing between the them. Mr Tuff stated that he could feel his temper rising as he was exasperated by the Claimant's lack of concern and defensiveness.

The Claimant stated Mr Tuff called him a '*thick stupid cunt'*. Mr Tuff denies this and states that although swear words were used those words were not. As an aside, Mr Tuff states that it is not unusual to use and hear industrial language, with many swear words, on the sites that they work.

79. The Claimant initially stated in his ET1 that this event was in October 2017, in his further particulars that this incident took place on 17 October 2017. However, in his statement to the Tribunal he stated that this took place on 19 September 2017 and added that Mr Tuff used the same expression again during a telephone call in October 2017. The Claimant's credibility in this respect was again questionable and we accept Mr Tuff's evidence in this regard. We find that the Claimant is more likely to be unreliable and we do not accept that the context was such that Mr Tuff would have used the words '*thick stupid cunt'*. The three witnesses who were compelled to give evidence to the Tribunal by witness orders all stated that such words were not the type that that Mr Tuff was prone to use.

80. We find that the Claimant was upset by being spoken to in exasperated and expletive terms by Mr Tuff regarding not knowing where the drawings and the cable rods were and at this moment he was losing his enthusiasm in the work he was doing. The phone records indicate that the Claimant tried to contact Remit around this time. However, the Claimant did not get through to Remit and he did not pursue any concerns he had regarding this incident.

81. At 10:02pm on Sunday 8 October 2017 the Claimant text messaged Mr Tuff asking where he would be working the following day Mr Tuff responded:

> '*You should already know James! The time to find out where you are start of the next working week before you finish your current one not at 10 PM on a Sunday night. Please make sure that the way it is from now on. You're with Colin at Little Garth. Hope you had a nice long weekend, speak soon* 👍*'*

82. Mr Tuff accepts that this text was mildly admonishing as the Claimant ought to have known where he was working before 10pm on a Sunday night.

83. The Claimant made a further allegation, for the first time in supplemental witness statement, written in response to Mr Tuff's statement that Mr Tuff called him a '*thick stupid cunt'* on 17 October 2017 during a telephone conversation. Mr Tuff denied this and countered that around that time the Claimant's mother, Mrs Coote, complained to him that Mr Colin Nicholls had called the Claimant a thick stupid cunt. Mr Nicholls is a self-employed contractor who worked for Mr Tuff from time to time. Mr Tuff was concerned about this allegation. He was aware that Mrs Coote worked in employment law and he undertook an investigation into what she had informed him. He questioned Mr Nicholls about this at the time and Mr Nicholls denied abusing the Claimant or using those words. Mr Nicholls confirmed Mr Tuff's evidence. Mr Nicholls stated that had to tell the Claimant off at the time because his attitude was unacceptable but that he considered the matter was resolved. In this context both Mr Tuff and Mr Nicholls stated that by this time the Claimant had developed a bad attitude and was disinterested and argumentative on a number of occasions.

84. The Claimant did not make an allegation that there was a separate phone call on 17 October 2019 where Mr Tuff was said to have used the derogatory offensive

words to him. It is not in the Claimant's ET1 or in his further better particulars or in his first witness statement. Further, Mrs Coote was in the Tribunal for the first three days of the hearing and no evidence was heard from her in response to the evidence of Mr Tuff or Mr Nicholls. The mobile phone records of Mr Tuff and the records of the office telephone do not indicate that there was any call made by Mr Tuff to the Claimant on 17 October 2017 as alleged. We therefore prefer the evidence of Mr Tuff and Mr Nicholls on this point. We would add that we consider the Claimant's evidence that he did not know what his mother did for a living as completely lacking in credibility. Her awareness in employment law was recorded in the Remit records relating to claims the Claimant made following his dismissal and we have little doubt that Mrs Coote provided the information and advice for a number of the legally technical claims that the Claimant sought to bring, a number of which have been subsequently withdrawn.

85. The Claimant's clash with Mr Nicholls led to him contacting Remit again. He did so on 17 October 2017. There is no contemporaneous documentation of what he is alleged to have said to Remit or any concerns relating to Mr Tuff of what the Claimant was alleged to said it.

86. The Claimant also sent an email to Chris Garcia of Remit on 17 October 2017. This stated:

> *"Hello, I'm James Coote a apprentice for Britelec and for weeks have been trying to find someone who's is my assessor or can help me as i feel I can't complete my apprenticeship with my current employer and put this on record many times and is becoming quite important concerning now.*
> *Many thanks*
> *James"*

87. Before the Tribunal, the record of the *'many times'* that the Claimant sought to contact Remit that the Tribunal had was:

87.1 A 14 second telephone call on 19 September 2017;

87.2 A 41 second telephone call on 19 September 2017;

87.3 A 7 second telephone call on 20 September 2017; and

87.4 A 6 minute and 19 second telephone call on 17 October 2017.

88. There is no record of any complaints that the Claimant had in the Remit documentation prepared when they attended the Respondent's premises on 24 November 2017 and 3 January 2018. In the learner agreement the Claimant was able to comment on personal development, behaviour and welfare, health and safety, equality and diversity. No concerns are recorded where the Claimant is said to have expressed concerns about the behaviour and conduct of Mr Tuff.

89. Separately, for the purposes of the Tribunal the Claimant had requested all the correspondence he had from Remit and there was no contemporaneous documentation that supported his complaints.

90. The Claimant wrote a lengthy letter of concerns to Remit on 21 January 2018 but this did not mention the detail of the *'extremely abusive and rude'* allegations relating to Mr Tuff's conduct.

91. Save for the 17 October 2017 email and 21 January 2018 letter of concerns to Remit there are no other emails, texts or documents to support the allegations of verbal abuse and harassment that the Claimant now makes against Mr Tuff.

92. Mr Tuff for his part denies acting in such a manner and says that the Claimant has contrived a claim against him. Mr Tuff states that the Claimant became disinterested in working from time to time and this manifested itself in a bad attitude that ultimately resulted in his dismissal. Given our findings outlined above, the lack of contemporaneous support for the allegations the Claimant makes, and our findings that the Claimant's credibility has been lacking, we do not conclude that he was subjected to such abuse by Mr Tuff.

New Payroll

93. Ms Kirsty Tuff was the First Respondent's company secretary until December 2017. Prior to this date the Claimant, like other employees, sent Ms Tuff his work times, location and travel costs for Ms Tuff to facilitate expenses claims and payments. The Claimant was accustomed to recording all of this information in his own notebook so he could give it to Ms Tuff to complete when requested.

94. The First Respondent changed its payroll provider following the departure of Ms Tuff and the expenses process changed. All workers were then required to complete an Excel spreadsheet where they would have had to put in the work times, all work locations and expenses claimed. The payroll company would then process the payment. This was a new process and all workers on payroll were required to comply with it.

95. Mr Tuff emailed the Claimant and Mr McEvoy on 19 December 2017 stating that as Ms Tuff was leaving they would need to do their own timesheets to comply with a new monthly payroll cycle. It was stated that it was important to comply with this because if they missed the cut off point they would not get paid.

96. The expenses sheet was an Excel spreadsheet with a number of rows and columns. With a smart phone and/or laptop the Excel spreadsheet could be expanded so that entries could be made easily.

97. On 2 January 2018 Mr Tuff emailed the Claimant and Mr McEvoy emphasising that the cut off point for timesheets and payroll was midnight on the 12th of each month. Mr Tuff asked them to send the completed timesheets to him for approval so he could then forward them accounts to process.

98. The Claimant sent an email to Mr Tuff on Friday 12 January 2018 at 8.34pm with no expenses attachment. Mr Tuff informed the Claimant that there was no attachment to the email the following Monday morning, 15 January 2018. The Claimant spreadsheet was then submitted at 17.58 on 15 January 2018. The Claimant therefore did not submit his expense claim within the timescale to get processed, as outlined by Mr Tuff in his earlier emails.

99. The Claimant complained about non payment and Mr Tuff responded by text on 20 January 2018 stating:

> *"the timesheets need to be checked by myself for approval then passed to the accountants for them to do payroll run which actually happened for everyone else Wednesday. Once they have done that I can pay you, I'll review and correct yours and delivery to them this weekend and then I should imagine she'll do it Monday or Tuesday.*
>
> *Had u got right first time, or asked me to go over how to do it in the office so I can have shown you before it needed submitting or even got it corrected and back quicker you'd have been paid and you wouldn't placed yourself on the financial difficulties."*

100. The Claimant did not inform Mr Tuff at any stage that he had difficulty completing the Excel spreadsheet or that he needed help or any adjustments in completing it. In view of the working relationship, the effective coping strategies that has been suggested for the Claimant to undertake the role, and there being no further concerns being raised, Mr Tuff had no reason to suspect that the Claimant had any difficulty in completing the timesheet.

101. The Claimant eventually had his expenses settled 23 January 2018 following Mr Tuff deciding to incur further accountancy charges resulting from having to do two pay runs in the month.

Conduct and termination

102. On 14 January 2018 the Claimant informed Mr Tuff that he had a problem with his car and he could not use it to get work the following day. Mr Tuff did not believe the Claimant was telling the truth in relation to his car not working and referred the Tribunal to text messages between the claimant and Mr McEvoy to seek to make this point. The Claimant maintained that he had a genuine problem with his car. The Claimant did not attend for work on 15 January 2018 and was not paid. The Claimant could not get to work site as required that day and was not paid for that day.

103. On 16 January 2018 at about 12.30pm the Claimant was asked to do some CCTV cabling by Mr Rushforth at the Colchester University site as they needed to it to be done as soon as possible. The Claimant responded by saying *"nah I'm fucking off home"* and left without explanation. The Claimant returned about 2 hours later to collect testers and went again. The Claimant stated to the Tribunal that he left work on this occasion to collect his father from hospital, that he left a message with Mr Tuff to this effect, and then he went back to work. The Claimant stated that he did not want to tell Mr Rushforth his personal information. We do not accept the Claimant's evidence. Whilst he may have collected his father from hospital he did not inform Mr Tuff of this nor did he return to the site to do any work. During his telephone conversations with Mr Tuff on this day enquiries were made about how work was progressing. The Claimant lied to Mr Tuff by saying that there was no more testing of data cabling work to do and that he was going to leave work. However, when Mr Tuff got the test results for the day it was evident that there were no test results and the Claimant had not done what he said he had.

104. On 17 January 2018 Mr Tuff was informed by email about concerns about the progress being made on the site by the client. The client was one of the First Respondent's biggest customers. Mr Tuff then made enquiries about what was happening on the site by speaking to Mr Rushforth. Mr Rushforth informed him about the Claimant leaving the previous afternoon and the fact that he had not done any work.

105. On 18 January 2018, the Claimant had an early start as he was required to drive to a site at Egham. However, there was no work the Claimant could do at that site as the electrician he was expected to work with could not attend. The Claimant was then asked to get to the Colchester University site as soon as possible and go to Braintree to pick up equipment for a job. When the Claimant got to the Colchester University site Mr Tuff spoke to him about why he did not pick up his mobile phone for work instructions. The Claimant stated that he was driving. Mr Tuff asked the Claimant what happened on the 16 January 2018 and the delays caused by him not working. There was impeding deadline of 23 January 2018 that had to be complied with. The Claimant apologised but did not provide an explanation. Mr Tuff stated that the Claimant would have to stay late to finish the job as it was his fault why the job was not complete. The Claimant stated that he was very tired with all the driving as he had left home at 5.30am and that he would be leaving work at 4pm. Mr Tuff stated that leaving site without authorisation could result in dismissal and that the Claimant was selfish and useless.

106. The Claimant left work at 4pm, against the instruction of Mr Tuff, and other members of staff had to stay and work late to try and meet the deadline for completion of the works. The Claimant's absence from work on the afternoon of 16 January 2018 and leaving at 4pm on 18 January 2018 caused Mr Tuff to seriously consider whether to continue the relationship with the Claimant.

107. The Claimant worked with Mr Tuff again on 22 January 2018. By this time Mr Tuff had been deliberating whether to continue the working relationship with the Claimant. Mr Tuff had sought advice from his consultants at Croner on 9.11am and had been provided with a 'short service dismissal' template letter by them. Mr Tuff was concerned that the Claimant's conduct had the potential to damage the First Respondent's commercial relationship with their client. Mr Tuff was concerned that the necessary trust that was necessary to hold in the Claimant was damaged by the Claimant lying to him previously.

108. Mr Tuff spent the day considering whether to follow through with the plan to dismiss the Claimant. His doubts about doing so were overcome when it was discovered that the Claimant had spent an hour and 10 minutes to do a task that should have taken at most 10 minutes.

109. On the afternoon of 22 January 2018 the Claimant was supposed to be terminating CCTV cables and testing them. The Claimant was observed looking over a balcony and not working. When questioned on this he said that he had been speaking to Mr Rushforth about floor boxes. Mr Tuff asked the Claimant why he was doing that when he should have been doing CCTV cables. The Claimant could not provide an answer. Mr Tuff subsequently spoke to Mr Rushforth who denied that he spoke to the Claimant about floor boxes. The Claimant had lied again.

110. Mr Tuff then spoke to the Claimant about what he was doing. He stated that he had been testing CCTV and was going to clear up a room that he had been working in with Mr Nicholls that afternoon. Mr Tuff went with the Claimant to clear the room with him and said that they would complete the rest of the tests together. Two tests were undertaken at 5.21 and 5.23pm. Mr Tuff then looked at the test times and discovered that the Claimant had only tested two points between 3.55pm and 5.10pm. The work that the Claimant was required to do was uncomplicated and Mr Tuff would have expected '*dozens*' of tests to have been done in that time period. Mr Tuff was concerned about this and asked what the Claimant had been doing since 4pm. The Claimant stated that he was helping Mr Nicholls to pack up the room. Mr Tuff pointed out that Mr Nichols had left at 4pm and that the Claimant stated that he was going to do CCTV termination tests. The Claimant then stated that he was clearing up the room and Mr Tuff pointed out that they were just in the room which was a '*real mess'* and had not been cleared up. Mr Tuff stated that he was just trying to understand what the Claimant had been doing for the last hour or so. The Claimant responded by saying he was tidying up personal stuff, Mr Tuff asked what and the Claimant responded by saying *'personal stuff that's none of your fucking business'*. Mr Tuff then told the Claimant he was dismissed and told him to make sure he returned all the tools and anything else of the company back in the office. The Claimant put the tools he had down on the floor then walked off shouting to Mr Tuff '*go fuck yourself Richard*' and stuck two fingers up at him.

111. Mr Tuff wrote to the Claimant to confirm the dismissal and reasons for it on 23 January 2018. The Claimant was given one week's notice and notified that he would be paid accrued holiday pay. The Claimant was not provided with a right of appeal.

112. The Claimant replied to Mr Tuff by letter dated 25 January 2018 disputing the grounds for dismissal and stating that he had none of the Respondent's equipment and that he would like his hoodie to be returned.

Holiday entitlement

113. The parties agree that the accrued holiday for the period of the Claimant's relationship was 15.31 days. The documentation provided by the Respondent of the holiday taken by the Claimant establishes that the Claimant had taken 14 days holiday during the relevant period.

**Law**

114. Section 13 of the Equality Act 2010 ('EqA') states:

> **13 Direct discrimination**
>
> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

115. The Court of Appeal, in Madarassy v Nomura International Plc [2007] EWCA Civ 33, stated at paragraph 56.

*"The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination). It was confirmed that a Claimant must establish more than a difference in status (e.g. race) and a difference in treatment before a tribunal will be in a position where it 'could conclude' that an act of discrimination had been committed."*

116. The burden is on the Claimant to prove, on a balance of probabilities, a prima facie case of discrimination. Ms Meenan referred to the EAT case of Efobi v Royal Mail Group Ltd [2018] ICR 359 to submit that the Claimant does not bear the burden of proving anything. This is not correct proposition of law. The Court of Appeal overturned the EAT decision in Royal Mail Group Ltd v Efobi [2019] EWCA 18 and relied on the Court of Appeal authority of Ayodele v Citylink Ltd [2017] EWCA Civ 1913 in doing so.

117. Therefore, in respect of the Claimant's claims for direct discrimination he must establish that he was less favourably treated because of he has dyslexia. Any actual or hypothetical comparator must therefore have the same or similar circumstances.

118. Section 15 EqA defines discrimination arising from disability.

**15 Discrimination arising from disability**
(1)A person (A) discriminates against a disabled person (B) if—

(a)A treats B unfavourably because of something arising in consequence of B's disability, and

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

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

119. Sections 20 EqA provides for the duty to make reasonable adjustments.

**20 Duty to make adjustments**

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

(2)The duty comprises the following three requirements.

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

120. When considering whether the application of a PCP places a disabled person at a substantial disadvantage in comparison with non disabled persons Elias LJ stated at paragraph 58 in the Court of Appeal case of Griffiths v The Secretary of State for Work and Pensions [2015] EWCA that:

*"one must simply ask whether the PCP puts the disabled person at a substantial disadvantage compared with a non-disabled person. The fact that they are treated equally and may both be subject to the same disadvantage when absent for the same period of time does not eliminate the disadvantage if the PCP bites harder on the disabled, or a category of them, than it does on the able bodied."*

121. Section 26 EqA defines harassment.

**26 Harassment**

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

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

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

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

(2) A also harasses B if—

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

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

(3) A also harasses B if—

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

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

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

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

(a)the perception of B;

(b)the other circumstances of the case;

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

(5)The relevant protected characteristics are—
• age;
• disability;
• gender reassignment;
• race;
• religion or belief;
• sex;
• sexual orientation.'

122. In considering unlawful harassment the context must be considered. In the EAT case of Warby v Wunda Group PLC UKEAT/0434/11 Langstaff J stated that paragraph 23:

*"we accept that the cases require a Tribunal to have regard to context. Words that are hostile may contain a reference to a particular characteristic of the person to whom and against whom they are spoken. Generally a Tribunal might conclude that in consequence the words themselves are that upon which there must be focus and that they are discriminatory, but a Tribunal, in our view, is not obliged to do so. The words are to be seen in context; the context here was that the dispute and discussion was about lying. The conduct complained of, as the Tribunal saw it, was a complaint emphatically made about lying; it was not made to the Claimant because of her sex, it was not made to the Claimant because she was pregnant, and it was not made to the Claimant because she had had a miscarriage. In the words of Ahmed at paragraph 37, as earlier quoted:*

*"The fact that a Claimant's sex or race is a part of the circumstances in which the treatment complained of occurred, or of a sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment."*

123. Section 13 of the Employment Rights Act 1996 provides the right not to suffer unauthorised deductions from wages. It states:

**13 Right not to suffer unauthorised deductions.**

(1)An employer shall not make a deduction from wages of a worker employed by him unless—

(a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b)the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2)In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a)in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b)in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

124. Section 38 of the Employment Act 2002 provides for the failure to give a statement of employment particulars. It states:

**38 Failure to give statement of employment particulars etc.**

(1)This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule 5.

(2)If in the case of proceedings to which this section applies—

(a)the employment tribunal finds in favour of the employee, but makes no award to him in respect of the claim to which the proceedings relate, and

(b)when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996 (c. 18) (duty to give a written statement of initial employment particulars or of particulars of change or under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on Sunday), the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the employee and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

(3)If in the case of proceedings to which this section applies—

(a)the employment tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996 or under section 41B or 41C of that Act, the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

(4) In subsections (2) and (3)—

(a)references to the minimum amount are to an amount equal to two weeks' pay, and

(b)references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.

125. In determining whether the Claimant's contract was a contract of employment or a contract of apprenticeship Ms Meenan referred the Tribunal to the cases of Chassis & Cab Specialists Ltd v Lee UKEAT/0268/10/JOJ (Underhill P), and Flett v Matheson [2006] ICR 673, Court of Appeal. The cases demonstrate that the following factors must be considered.

125.1 Is the principal purpose of the contract training of the 'apprentice';

125.2 What is the duration of the training;

125.3 What level of qualifications are to be gained;

125.4 What was the contractual intention of the parties; and

125.5 What labels and language did the parties apply to the relationship.

126. Ms Meenan further submitted that as the specific requirements of section 32 of the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA) had not been complied with in this case, due to the Respondent failing to provide the Claimant with written terms and conditions, the contract must be construed as a contract of apprenticeship.

127. When considering termination of contracts of apprenticeship Ms Meenan submitted that misconduct would not be sufficient to terminate unless the apprentice's actions were so extreme that the apprentice is effectively unteachable. She relied of the case of Learoyd v Brooks [1891] 1QB 435 and Wallace v CA Roofing Services Ltd [1996] IRLR 435, QBD in this regard. In Wallace, Sedley J stated at paragraph 13:

*"As this case shows, the announcement of the demise of apprenticeship is exaggerated. In particular, the assimilation of apprenticeship to employment for specific statutory purposes has not in my view necessarily had the effect in law suggested by the learned editor of the current edition of Halsbury's Laws. In such a relationship the ordinary law as to dismissal does not apply. The contract is for a fixed term (see North East Coast Shiprepairers Ltd v Secretary of State for Employment [1978] IRLR 149, 3). Where an employee might expect to be dismissed for misconduct, an apprentice can expect to be punished, though today not physically. The difference in treatment reflects the difference in the nature of the relationship. Most particularly, although a contract of apprenticeship can be brought to an end by some fundamental*

*frustrating event or repudiatory act, it is not terminable at will as a contract of employment is at common law."*

## Conclusions

128. The Tribunal was provided with helpful written and oral submissions from the parties' representatives. The Tribunal was particularly impressed with the judgement, tenacity and confidence demonstrated by Ms Meenan, a pupil barrister acting for the Claimant on a pro bono basis. She is a credit to the bar.

129. In view of our findings of fact and analysis of the law, our conclusions on the issues are as follows.

Direct discrimination contrary to S.13 of the Equality Act 2010

130. We conclude that the Respondents did not treat the Claimant less favourably than they treated, or would treat, others because of the Claimant's disability contrary to s.13 and s.39(2) of the Equality Act 2010. In respect of the specific acts of direct disability discrimination relied upon we conclude as follows:

130.1. The Respondent did not provide the Claimant any contribution to the running of his vehicle, no workers were paid any contribution to the running of their own vehicle, save for the payment of 20 pence per mile. This sum was paid to the Claimant when applicable. No workers were entitled to a fuel card to use on their own private vehicle. Fuel cards were used for company vehicles only and the Claimant did not have a company vehicle because it was too expensive to insure him on it due to his driving penalties.

130.2. We did not find that the Claimant was asked to work excessive hours and then threatened with dismissal. Therefore the Claimant has not established this allegation.

131. The Claimant's claims for direct discrimination on grounds of his disability therefore fail and are dismissed.

Discrimination arising from disability s15 of the Equality Act 2010

132. When considering whether the Respondents treated the Claimant unfavourably because of something arising in consequence of the Claimant's disability, contrary to s.15 and s.39(2) of the Equality Act 2010 we considered whether the allegations the Claimant made were established and if so, whether the allegation involved unfavourable treatment arising in consequence of the Claimant's disability.

133. Our conclusions on the Claimant's specific allegations are as follows:

133.1. The refusal by the First Respondent to pay the Claimant any contribution to the running of this vehicle, including a fuel card was not in consequence of his disability. His disability was not a relevant factor in this.

133.2. On 19 September 2017, Mr Tuff criticised the Claimant in respect of the whereabouts of the drawings and cable rods. Mr Tuff did not criticise the work that the Claimant had done and his disability was not a relevant factor in this.

133.3. The Claimant had not established that Mr Tuff called the Claimant a "*thick stupid cunt*". In respect of the expletive argument that Mr Tuff had with the Claimant on 19 September 2017 the Claimant's disability was not a relevant factor in this.

133.4. Mr Tuff did *"mildly admonish"* the Claimant by text message on 8 October 2017, for not knowing where he was working the next day. The Claimant's disability was not a relevant factor in this.

133.5. The Claimant had not established that Mr Tuff called the Claimant a "*thick stupid cunt*" on 17 October 2017.

133.6. The Claimant did not attend for work on the 15 January 2018 and was not paid. The Claimant's disability was not a relevant factor in this.

133.7. The Claimant was not paid between 15 January 2018 and 21 January 2018, because the Respondent had changed payroll providers and the Claimant had submitted his timesheet later than the cut-off point. We do not conclude that the Claimant's disability prevented him from complying with the cut-off date for the submission of the expense claim and therefore his disability is not a relevant factor in this.

133.8. On 18 January 2018 Mr Tuff expressed his frustration at the Claimant's attitude and called him selfish and useless and stated that leaving site without authorisation could result in dismissal. The context of this was that (i) the Claimant had lied to him previously about completing works, (ii) the job for a major client at Colchester University had to be completed within a deadline, (iii) it was behind schedule due to the Claimant leaving the site without authorisation and (iv) the Claimant stated that he had no intention of staying to work after 4pm. We do not conclude that the Claimant's disability was a relevant factor in this.

133.9. We do not accept the Claimant's version of events on 22 January 2018 and find that Mr Tuff's version is reliable as outlined in our findings of fact. The speed of the Claimant's work, doing two terminations in 1 hour and 10 minutes was a significant concern for Mr Tuff. Mr Tuff did not criticise the work done by the Claimant that afternoon, more he was criticising the lack of work done by the Claimant and the absence of explanations for this. The Claimant did not maintain that his dyslexia was the reason for only doing 2 termination test in the period and work was unable to establish before us that the lack of work was related to his dyslexia. We do not accept the Claimant's contention that his slow his performance on this occasion was as result of his disability and the continuous pressure that the Respondent placed on him which exacerbated his existing condition. We have not found that there was

continuous pressure place on the Claimant. Therefore we do not conclude that the events and interaction between the Claimant and Mr Tuff on 22 January as related to or arising from the Claimant's disability.

133.10. The Claimant was dismissed on 22 January 2019 following Mr Tuff losing trust in the Claimant and reaching his limit in respect of the Claimant's attitude and approach to work. We do not conclude that the Claimant's disability was a relevant factor in this.

134. Given that the Claimant has not established that any of the allegations found arise in consequence of his disability his claims under section 15 EqA 2010 fail and are dismissed.

Unlawful harassment s.26 EqA

135. The Claimant has not established that any of the allegations he makes are related to his dyslexia for the purposes of establishing a harassment complaint under section 26 EqA.

136. We considered the discussions of 19 September 2017, the text message of 8 October 2017, the frustration expressed by Mr Tuff on 18 January 2018 and the Claimant's dismissal of 22 January 2018 and did not conclude that they were related to the Claimant's disability at all. They were comments relating to work and the approach to be taken to work. The Claimant's unlawful harassment complaints therefore fail and are dismissed.

Failure to make reasonable adjustments s.20 and 21 EqA

137. The Tribunal concludes that the Respondent applied the following PCPs to the Claimant:

137.1. PCP 1, Requiring the staff to identify numbering on cables?

137.2. PCP 3, Requiring staff to fill-in their own timesheets?

138. The Tribunal concludes that PCP1 put the Claimant at a substantial disadvantage in comparison with persons who are not disabled.

139. The Tribunal does not conclude that PCP3 put the Claimant at a substantial disadvantage in comparison with persons who are not disabled. The timesheet could be enlarged and populated with the information that the Claimant was recording in his own notebook in any event. We do not conclude that the Claimant's disability meant that he was unable to complete the timesheet in accordance with the cut-off date that he was informed about.

140. The Tribunal does not conclude that the Respondent applied PCP 2 in the approach it took to giving feedback. We do not find that there was any specified practice or approach to feedback that was given that put the Claimant at a substantial disadvantage.

141. With regards to PCP1, the Claimant asserted that he needed more time to differentiate numbers to ensure that he identified them correctly. The identification of numbers on wiring was raised as an issue in August 2017 and helpful strategies were suggested and implemented. It was not an ongoing problem and no criticism or comments of the pace of the Claimant's work was raised until 22 January 2018. However, identification of numbers on wires was not the reason for the Claimant's lack of work on the 22 January 2018. In any event whilst additional time to allow the Claimant would have been a reasonable adjustment, we find that providing an hour and 10 minutes to do two termination tests would not have been a reasonable adjustment.

142. In respect of each of the Claimant's allegations of failure to make reasonable adjustments the Tribunal conclude that the Respondent did not know nor could it have been reasonably expected to know that the Claimant's placed him at a substantial disadvantage in comparison with persons who were not disabled. The Claimant asked for assistance in August 2017 and was provided it. He did not raise any further concerns or display any signs of being unable to undertake tasks and work. The text from Mr Tuff to the Claimant on 20 January 2018 summarises the reality of the understanding when he states:

> *Had u got right first time, or asked me to go over how to do it in the office so I can have shown you before it needed submitting or even got it corrected and back quicker you'd have been paid and you wouldn't placed yourself on the financial difficulties.*

143. The Claimant did not ask for any help or assistance and did not display any signs that he needed such help.

144. In these circumstances the Claimant's claim that the Respondent failed to make reasonable adjustments fails and is dismissed.

Breach of contract

145. The Tribunal concludes that the Claimant was employed under a contract of employment and not a contract of apprenticeship. In doing so we concluded and balanced the following factors:

145.1 The principal purpose of the contract was work and not training. The hours the Claimant worked, including long hours on time sensitive contracts and the 48 hour opt-out agreement is indicative of this.

145.2 The duration of the training 'apprentice' period was 13 months. This is a relatively short period to gain lifetime skills and qualifications that are usually associated with apprenticeships.

145.3 The qualifications that the Claimant would have gained is Infrastructure Technician Level 3. However, there was no day release classroom training or defined training agenda to work to.

145.4 The contractual intention of the parties, under the Tripartite arrangement was a contract of employment. The Respondent ought

to have provided the Claimant with a contract of employment but did not.

145.5 The parties used the language of 'apprentice' when referring to the relationship. However the labels the parties use are not in themselves sufficient to define the relationship.

146. The Tribunal did not accept that section 32 of ASCLA is determinative of the contractual relationship. The common law principles of what amounts to an apprenticeship should still be considered. What section 32 ASCLA does is converts a common law apprenticeship to a contract of employment provided that the relevant procedures are complied with.

147. If the Tribunal is wrong in its assessment of the contractual relationship we conclude that the attitude and the conduct of the Claimant to Mr Tuff was repudiatory and such that he was in effect no longer teachable by Mr Tuff for the contract of apprenticeship to be brought to an end, as it was on 22 January 2018.

148. The Claimant's claim for wrongful dismissal therefore fails and is dismissed.

Unlawful deductions of wages

149. The Claimant has not established that the Respondent underpaid him for hours worked. The Claimant commenced work on 7 August 2017 when he received the ECS card. The Claimant was not entitled to be paid for travel time to and from work sites from his home unless more than 2 hours travel was involved. When this occurred he was paid additional sums. The Claimant's claims for unpaid wages therefore fail and are dismissed.

150. The Tribunal conclude that the Respondent did unlawfully deduct £163.95 from the Claimant in respect of tools and equipment. The Claimant left the equipment with Mr Tuff at the site on 22 January 2018 and subsequently wrote to say he had not further equipment. As such the Respondent had no entitlement to deduct this sum.

151. The Respondent is therefore ordered to pay the Claimant the sum of £163.95 in respect of this aspect of the Claimant's claim.

Accrued holiday pay

152. The Claimant claims 4.31 days accrued holiday pay. However, our findings are that the Claimant took 14 days holiday and as such the accrued holiday entitlement for the Claimant is 1.31 days.

153. The Respondent is therefore ordered to pay the Claimant the sum of £63.86 in respect of accrued holiday pay (1.31 days at £48.75 per day).

Written particulars

154. The Respondent accepts that it did not provide the Claimant with a written statement of particulars in accordance with section 38 of the Employment Act 2002. The Tribunal conclude that the higher rate of 4 weeks is appropriate given the length

of time the Respondent has been in business and the fact that a contract of employment was a specific requirement of the tripartite agreement but not provided.

155. The Respondent is therefore ordered to pay the Claimant the sum of £975.00 in respect of the failure to provide a written statement of particulars.

ACAS

156. The Respondent did not contact Remit to follow the Tripartite contract dismissal procedure or follow any procedure in dismissing the Claimant. The Tribunal therefore concludes that an uplift of 25% on the total compensation sum £1202.81 is appropriate.

157. A further sum of £300.70 is therefore added to the compensation due to the Claimant.

Total award

158. The Respondent is therefore ordered to pay the Claimant the sum of £1,503.51 in respect of his successful claims.

159. The provisional remedy hearing listed for 5 November 2019 is vacated.

Employment Judge Burgher

27 August 2019