



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Polley  
**Respondent:** MPK Garages Limited  
**Heard at:** Reading **On: 20, 21 and 22 January 2025**  
**Before:** Employment Judge Gumbiti-Zimuto

## Appearances

**For the Claimant:** In person (assisted by Mrs J Hudson)  
**For the Respondent:** Mr S Morley, consultant

## RESERVED JUDGMENT

The claimant's complaints of unfair dismissal and disability discrimination are not well founded and are dismissed.

## REASONS

1. This judgment was reserved at the request of the claimant.
2. In a claim form presented on 22 August 2021 the claimant made complaints of unfair dismissal and disability discrimination. The respondent denies the claimant's complaints.
3. At a preliminary hearing on 8 November 2022 Employment Judge Eeley set out the issues to be decided in this case. At a further preliminary hearing 13 September 2023 Regional Employment Judge Foxwell found that the Tribunal can consider the claimant's complaints which had been presented outside the time limit for the presentation of complaints.
4. The claimant gave evidence in support of his own case and also produced short statements from former colleagues, B Turner, K Gilmore, a person whose windows the claimant cleans S Sherwood, G Goldring, J Harrison and Danash who are current colleagues in the claimant's new employment. The respondent relied on the evidence of Robert Simons, Karen Gilmore and Carl Harris. The respondent's witnesses produced statements which were taken as their evidence in chief. The claimant produced a document that contained

his statement of evidence despite it not being presented in statement form. The parties also produced a Trial bundle containing 343 pages of documents.

5. I made the following findings of fact.
6. The claimant is dyslexic. The respondent concedes that the claimant is dyslexic and that his dyslexia constitutes a disability with the meaning of section 6 Equality Act 2020. The respondent does not accept that it had any actual or constructive knowledge of the claimant's disability at the relevant time.
7. The respondent owns and operate franchise fuel service stations across the United Kingdom. The claimant was employed by the respondent from 28 March 2020 as a shop assistant at its Wallingford Service Station. The claimant's store manager was Robert Simons. The claimant's work colleagues included K Gilmore, C Harris and JS. JS was promoted to the position of assistant manager from 23 October 2020 but had been employed by the respondent from before that date.
8. The claimant and JS were at some point in a relationship, that relationship had come to an end by December 2020. The claimant contends that JS had been stealing from the respondent and he had reported this to the respondent by telling Robert Simons. Robert Simons denies that the claimant ever reported this to him. The respondent contends that it became aware of allegations that JS was stealing after the claimant's employment ended and that this report was made not by the claimant but by another one of it's employees, AT. A subsequent investigation led to the dismissal of JS from the respondent's employment.
9. It is accepted by the parties that the claimant was an exemplary employee who carried out the full range of his duties and took on extra tasks. The claimant contends that he required significant assistance from colleagues in order to perform tasks that required an ability to read well. The claimant accepts that he could carry out tasks that required some reading skills but states that this was because he was able to retain the information about how to perform tasks once they had been demonstrated to him. Robert Simons challenges the notion that the claimant had any difficulty performing his duties and states that he was unaware of the claimant's difficulties with reading and states that it would have been impossible for the claimant to do his job as he did without at least a basic ability to read.
10. The claimant was required to carry out various tasks in the course of his employment, this included litter picking in the environs of the service station, cleaning the forecourt, cleaning the ovens, cleaning the coffee machine, and cleaning the fridges. The claimant accepts that he never complained about having to carry out these duties and agreed with the respondent's evidence that he volunteered to carry out vermin control. There was appropriate PPE available for the cleaning tasks including high visibility jackets. The claimant gave evidence that there was a period of time when he used his own high

visibility jackets because none were other wise available, this was challenged by Robert Simons who said that they were available when required.

11. On 6 December 2020, JS came into the service station (while off duty) and took some items without wanting to pay for them. This caused a row with the claimant who indicated that he was going to give up his job with the respondent because he was fed up with the fact that JS was taking stock without paying and he was concerned that he would be implicated in her actions. The claimant later told K Gilmore that he was giving up the role and that this was to be his last day. At the end of his shift the claimant left his keys and his badge on the office desk and told K Gilmore that he had “jacked” meaning that he was giving up the job and resigning his employment. The claimant did not attend the shifts that he was scheduled work after the 6 December 2020.
12. On 7 December 2020 Robert Simons was told that the claimant had given up his job. Robert Simons said in evidence that it was: *“Not the first time he [the claimant] got angry when he does not agree with something. I did not think too much about it till he did not turn up for his next two shifts. No one knew what was going on he just did not turn up for two shifts.”*
13. The claimant did not attend work between 6 and 18 December 2020 even though he was scheduled to work.
14. On 17 December 2020, Robert Simons spoke to the claimant on the phone and told the claimant to attend work for 12 noon the following day 18 December 2020. In his evidence Robert Simons said that the claimant made it clear that he wanted he wanted to get back to work and so Robert Simons told the claimant that because the claimant had not been to work and was absent without leave there would have to be *“some sort of disciplinary process”*. In his evidence the claimant said that he would not have returned to work but for this telephone call and that he thought he was attending the meeting to discuss the fact that he had an issue with a fuel delivery (the claimant states that he was involved in an incident when he placed the wrong fuel in the tank) and that he might be chastised for this.
15. The claimant attended in his uniform and had expected to be able to resume his shift after being spoken to about his absence from work and the issue with the fuel. When the claimant arrived at work he was told he was to attend a disciplinary meeting. The claimant asked to be able to contact the union but was told that he *“was not allowed to bring the union in.”*
16. The disciplinary meeting was conducted by Sharon Webster Braddock, an area manager with Robert Simons as note taker. During the meeting the claimant’s manner was brusque. Notes of the meeting include the following extracts:

SWB<sup>1</sup>: Can you state what procedure is re not turning up to work?

---

<sup>1</sup> Sharon Webster -Braddock

TP<sup>2</sup>: No, I jacked the job in on 16/12/2020 so did not bother calling.

...

SWB: ... What is your understanding of the procedure if you don't turn up to work?

TP: I do not know I jacked the fucking job in so I really don't care.

...

SWB: The procedure is to notify the store if you can't make it in to do your shift.

TP: I do not know how o work my phone.

....

SWB: Could not you have got someone to call the store on your behalf?

TP: No as I don't want the fucking job, excuse my French.

...

SWB: I just need to ask if there are any mitigating circumstances as to why you didn't notify anyone of your absence and also why you left the site keys in an unsecure location?

TP: No, I just want to leave.

17. After a 15 minute adjournment Sharon Webster Braddock told the claimant he was being dismissed: *"The decision I have made is to dismiss you with one weeks notice for e following reasons. (1) failure to follow company procedure regarding absenteeism. (2) Failure to follow security procedure by leaving keys in unsecure location and not handing to a manager."*
18. The claimant obtained a short letter from K Gilmore setting her knowledge of events on 6 December 20220. With the assistance of a friend the claimant wrote a letter to the respondent's head office on 9 January 2021. The claimant made attempts to arrange an appeal against the decision to dismiss him.
19. The claimant eventually made contact with Andrew Kirkland, National Retail Controller, on 27 January 2021. The claimant spoke to Andrew Kirkland on the telephone. The claimant told Andrew Kirkland that he wanted to appeal. The claimant then proceeded to set out his version of events to Andrew Kirkland and was told that he would be contacted by Andrew Kirkland to arrange an appeal.
20. On 9 February 2021 Andrew Kirkland wrote to the claimant. The letter began *"Following your appeal hearing, held on 27<sup>th</sup> January 2021 I now write to confirm the content of the meeting and set out my findings and decision."* The claimant's evidence was that he did not consider that the telephone conversation on the 27 January 2021 was an appeal hearing as Andrew Kirkland had promised to get back to him about his appeal. Andrew Kirkland's letter dismissed of the claimant's appeal. The claimant says that there had been no appeal.

---

<sup>2</sup> Terry Polley

21. The claimant with the assistance of a friend then wrote to Andrew Kirkland on 20 February 2021 and subsequently sent further letters to the respondent until on 22 August 2021 the claimant presented his complaint to the Tribunal.
22. The claim form is laconic in setting out the details of the claim. In section 8.2 of the claim form it states that

“Situation at work was a manager was stealing and drunk in charge of the premises. I am severely dyslexic and am not good at using technology. I had exams taken for me without permission, I had to action jobs without the relevant health and safety training. It got to the point where I advised my manager of the evening that I had decided not to come back. I left the security keys in the locked office where everyone else leaves their keys. I was then called back in and asked to come back and then received a disciplinary hearing with 15mins notice and fired. I have spent the last 8 months requesting documents and sent various letters appealing this situation and have had very little response.”

In section 9.2 of the claim form it states as follows

“Due to my P45 not being sent out and I have just received a photocopy I have not been able to move forward with new employment. I have requested this 5 times so that the official document could be sent to my home address as of today's date I still do not have this. Compensation for loss of earnings (based on average working hours) I also feel that this company is not an equal opportunities company and have used my learning disabilities against me whilst trying to get answer to my release of employment and the situations surrounding it.”

23. Following a case management preliminary hearing the claims and issues that the claimant was asking the Tribunal to consider were set out. The claimant is claiming that he was unfairly dismissed because he made a protected disclosure (section 103A Employment Rights Act 1996 (ERA)) alternatively because he brought health and safety concerns to his employers attention (section 100 ERA). The claimant is also complaining about discrimination on the grounds of disability.
24. The qualifying disclosures, as defined in section 43B ERA, on which the claimant relies are set out in section 4.1 of the Case Summary contained in the Record of Preliminary Hearing on 8 November 2022.
25. The claimant is significantly disadvantaged in this case by his dyslexia which has impacted on his ability to produce written statement of evidence. The claimant has had to substantially rely on his recollection of events. Some of his evidence has appeared inconsistent and is criticised by the respondent as unreliable. I recognise that the claimant may have difficulty recalling certain events due to the passage of time and perhaps also due to his dyslexia which

I was told can result in “confused thinking” I am satisfied that the claimant is at all times doing his best to be truthful witness to events as he recalls them.

**Protected disclosures**

26. The claimant states that he told the Manager that the Assistant Manager (JS) was stealing from the business and was also driving off without paying for petrol, and that this was reported this regularly from April 2020. The respondent denies this and Robert Simons says that JS “*was not even in post until October 2020*”. The evidence of Robert Simons in this respect is either accidentally or deliberately misleading. JS was promoted to Assistant Manager in October 2020 her employment began before that date. The claimant was in relationship with JS and I am satisfied that his account about the pressure that her dishonesty had on him and the anxiety he felt as a result is genuine. I also note that the claimant is right in stating that JS was stealing from the respondent, that in fact turned out to be the reason that JS was dismissed. The question whether the claimant reported to Robert Simons JS’s actions turns on whether I prefer the evidence of the claimant or that of the claimant and I prefer the evidence of the claimant.
27. The claimant states that he told the Robert Simons that JS had fabricated the claimant’s computer test results so that he was recorded as competent to deal with hazardous substances on the forecourt. This allegation in my view is not made out. When the claimant’s recollection was tested in cross examination about this alleged incident it was not clear to me that it occurred. Robert Simons stated that the claimant did not complaint to him about this. The claimant did carry out the duty of cleaning the forecourt and in his evidence during cross examination accepted that he did not complain about this duty or the provision of training for it, the claimant did not specify that JS took this test for him. I am not satisfied that the claimant has proven that this occurred.
28. In is evidence the claimant clearly resiled from any complaints about not being provided with high visibility jackets.
29. In respect of the claimant’s complaints about cleaning fridges and the coffee machine or being given protective clothing to carry out those cleaning duties the claimant gave his evidence in such a way as to make it unclear whether he ever made any complaints as alleged. The claimant’s evidence in isolation would not have established the alleged qualifying disclosures, set against the clear denials and explanations provided by Robert Simons. I am satisfied that the claimant’s contentions about alleged qualifying disclosures as listed at 4.1.2 to 4.1.7 have not been made out. I note that in any event in relation to the item at 4.1.7 the claimant accepts that the alleged comment about the claimant being a cry baby was a joke, about which he does not now complain.
30. The claimant accepted in his evidence that he did not make any complaints to Robert Simons about locking up or about a plastic screen at till 2 during the COVID epidemic period.

31. The claimant in my view did disclose information that he believed to be made in the public interest in respect of JS stealing (4.1.1). The belief reasonable because she was stealing and it tended to show that a criminal offence had been, was being or was likely to be committed. The claimant made the qualifying disclosure to the claimant's employer. I am satisfied therefore that there was a protected disclosure.

### **Health and safety**

32. For the reasons set out above I am not satisfied that the claimant has shown that the matters referred to in section 5.1 of the Case Summary contained in the Record of Preliminary Hearing on 8 November 2022 have been made out.

### **Reason for dismissal**

33. It was not clear from the claimant's evidence why he considered that he had been dismissed. The argument presented by the claimant and his friend Mrs Hudson did not link the claimant's dismissal by Sharon Webster Braddock to either of the alleged inadmissible reasons for dismissal (namely making a protected disclosure or health and safety). Rather the argument appeared to be linked to the claimant's reasons for leaving on 6 December 2020.

34. The claimant's reasons for leaving on the 6 December were to do with the accumulation of frustrations that the claimant felt about JS's conduct in stealing from the respondent and how the claimant felt that he was being drawn into it by JS. This is not because the claimant had made a protected disclosure to Robert Simons about the claimant stealing.

35. The evidence that has been put before me is that Sharon Webster Braddock told the claimant he was being dismissed because of his failure to follow company procedure regarding absenteeism and failing to follow security procedure by leaving keys in unsecure location and not handing to a manager. There is no evidence that this is not the correct reason for the claimant's dismissal. There was no evidence that Sharon Webster Braddock was aware of any of the matters which the claimant alleges were protected disclosures. The claimant's protected disclosure was not a reason for dismissal.

36. The claimant's case on health and safety dismissal has not been made out because the claimant did not bring to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful to health or safety.

37. The claimant's claim of unfair dismissal is not based on section 98 ERA. The claimant did not have 2 years qualifying employment with the respondent and so the provisions of section 98 (4) ERA are not engaged.

38. The claimant and his representative in making submissions on the claimant's behalf argued a number of points which touched on matters very relevant to considerations under section 98(4) such as the process followed by the

respondent in arranging and conducting both the disciplinary hearing and the appeal. In this case these matters cannot lead to success in the unfair dismissal claim which turns on the reason for dismissal.

39. The claimant's complaint of unfair dismissal is therefore not well founded and is dismissed.

**Direct disability discrimination**

40. Section 13 Equality Act 2010 (EqA) provides that an employer must not discriminate against an employee by dismissing him or subjecting him to any other detriment. An employer discriminates against an employee if because of his disability he treats the employee less favourably than he treats or would treat others. Where the employee seeks to compare his treatment with that of another employee there must be no material difference between the circumstances relating to each case.
41. If there are facts from which the employment tribunal could decide, in the absence of any other explanation that the employer contravened the provision concerned the employment tribunal must hold that the contravention occurred. However, this does not apply if the employer shows that it did not contravene the provision.
42. The discriminatory acts that the claimant relies on are listed in section 7.1 of the Case Summary contained in the Record of Preliminary Hearing on 8 November 2022.
43. The claimant was dismissed.
44. The claimant was not required to carry out vermin control. The respondent employed a third party contractor to carry out vermin control. The claimant did this additional to his duties because of his concerns about the poison used to exterminate the vermin. The claimant was not asked by the respondent to do this the claimant was not required to do this.
45. The claimant was not required to carry out litter picking after dark without high visibility clothing. The claimant accepted this in his own evidence, he explained how he always used a high visibility jacket and in fact at times used his own high visibility garment when there was not one made available by the respondent.
46. The claimant was not required to clean fridges, coffee machines, or ovens whilst they were switched on.
47. The claimant was not required to clean the forecourt using hazardous chemicals. The claimant was asked to use a detergent that was not a hazardous material.



48. The claimant was not required to carry out cleaning tasks without safety equipment or training or a safe way of working.
49. The claimant was required to work on till 2 without a screen. However this was not less favourable treatment of the claimant as all of the respondent's employees working at the service station were required to do the same. The claimant was in no sense distinguished in this respect.
50. The claimant's dismissal was a detriment but there is no evidence that it was less favourable treatment. There is no evidence that any one else was in the same position as the claimant or in a position that was not materially different who was treated more favourably than the claimant.
51. Further the claimant's dismissal was because of his conduct in not attending work after 6 December and also because of leaving the keys to the service station in an insecure position. These reasons are not disability.
52. The claimant's complaints of direct disability discrimination are not well founded and are dismissed.

**Discrimination arising from disability**

53. Section 15 EqA provides that a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. This 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.
54. The claimant's dismissal was not because of something arising in consequence of disability. The claimant's absence from work after 6 December 2020 and the claimant leaving the keys to the service station in an insecure place was not something arising in consequence of disability.
55. The claimant has not shown that he was subjected to unfavourable treatment in respect of the following matters:
  - a. Vermin control, the claimant voluntarily carried this out he was no required to do it.
  - b. The claimant was not required to carry out litter picking without a high visibility jacket.
  - c. The claimant was not required to clean fridges, coffee machine and ovens whilst they were switched on.
  - d. The claimant was not required to clean oil off the forecourt with hazardous chemicals.

- e. The claimant was not required to carry out cleaning duties without appropriate safety equipment or training.
- 56. The claimant and all his colleagues worked on till 2 without a protective screen. This was not in any sense because of something arising in consequence of the claimant's disability.
- 57. The respondent did not know that the claimant was a disabled person.
- 58. The claimant's complaint of discrimination arising from disability is not well founded and is dismissed.

**Reasonable adjustments**

- 59. Sections 20 and 21 EqA are concerned with the duty to make reasonable adjustments. The duty to make adjustments comprises three requirements. The first requirement is relevant to this case and is a requirement, where a provision, criterion or practice of A's (in this case an employer) 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.
- 60. The second and third requirements are not relevant to this case.
- 61. A failure to comply with the first requirement is a failure to comply with the duty to make reasonable adjustments. An employer discriminates against an employee if the employer fails to comply with the duty in relation to that employee.
- 62. The claimant complains that the respondent had a practice of requiring employees to sit a multiple choice computer based test dealing with working with hazardous substances; and also a practice of requiring employees to work at till number 2 without a protective screen.
- 63. The claimant's witness statement does not expressly deal with this aspect of the claimant's case. The claimant does however state the following in his statement:

He also was stressed by health and safety issues. He had failed a computer based test on fuel management but when he returned to work after a day off, he returned to work to be told he'd passed the test. It was clear someone had sat the test for him.

At other times there were multi choice tests for other subjects such as selling alcohol but he was helped with these by colleagues.

Terry was very troubled by a health and safety incident when he didn't manage the fuel properly, leaving too little room for expansion and risking an explosion. This played on his mind.

Again he developed a range of strategies to cope but only did this through the kind support of staff in this very small team who all knew he didn't read or write at all well.

The small team led by the manager Bob Simmons were aware of Terry's strengths and difficulties and many tried to help him out. However, the managers did not understand the nature of his problems and their duty to make suitable adjustments. (Documents 3a, b, c, d)

They allowed Terry to continue manage fuel which demonstrably posed a health and safety risk."

The references to documents 3a, b, c, d, is a reference to the short statements of friends of the claimant or colleagues in his new employment who refer to the claimant's poor reading ability. The claimant's colleagues when he worked for the respondent did not give evidence of a similar nature and did not speak of the claimant's poor reading ability being common knowledge. This was consistent with the claimant's own evidence that he did not advertise his poor reading skills. In his new employment the claimant appears to have adopted a different approach in which he is open about his poor reading skills.

64. The respondent did not know that the claimant was a disabled person by reason of his dyslexia. The claimant was good at masking, i.e. carrying out his work activities in way that meant that people would not know that he was a dyslexic. The claimant was able to carry out all his duties without difficulty.
65. The claimant's performance was exemplary, many of the tasks that the claimant was required to do involved screens and written documents that required some knowledge of reading or ability to read to perform the tasks. However, there is no indication that these caused the claimant particular problems, save that the claimant states that when required to carry out training involving multiple choice questions without assistance he would just give random answers and thus fail the test. The claimant also gave evidence that he would complete tests with someone sitting next to him who would read the questions and he was able to provide the answers.
66. I am satisfied that in performing his role the claimant could continue to do so to such a standard that it was possible for the claimant to mask his dyslexia and unless specifically told by the claimant of his difficulty a fellow employee would not have known that the claimant had disability. I am satisfied that the respondent did not have actual or constructive knowledge of the claimant's

disability. In the absence of knowledge on the part of the respondent the claimant's claim about failure to comply with the duty to make reasonable adjustments is not well founded.

67. In respect of the claimant's complaint that the respondent had a practice of requiring employees to work at till number 2 without a protective screen the claimant has given no evidence of any substantial disadvantage. The complaint is not well founded for this additional reason.

Approved by:  
Employment Judge Gumbiti-Zimuto

Date: 23 January 2025

Sent to the parties on: 30 January 2025

.....  
For the Tribunals Office

**Public access to employment tribunal decisions:**

All judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

**Recording and Transcription**

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

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