Case Numbers**: 1305066/2023**

EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr A Shaer	**v**	**iForce Limited**

Heard at: **Birmingham** On: **31 March, 1, 2 April 2025**

Before: **Employment Judge Kenward**
Mrs R Pelter
Mrs E Shenton

Appearances
For the Claimant: **In person**
For the Respondent **Mr C McDevitt, Counsel**

WRITTEN REASONS

JUDGMENT and oral reasons having been given at the hearing on 2 April 2025, with Judgment having been sent to the parties on 3 April 2025, and written reasons having been requested by the Claimant on 14 April 2025, written reasons are now provided, as set out below.

Judgment

1. The Judgment of the Tribunal was as set out below.

   (1) The Claimant's complaint of unfair dismissal, contrary to Employment Rights Act 1996 sections 98 and 111, is not well-founded and is dismissed.

   (2) The Claimant's complaint of disability discrimination (by association) contrary to Equality Act 2010 section 13, is not well-founded and is dismissed.

Introduction

2. These proceedings arise out of the Claimant's summary dismissal from his employment as a Shift Manager with effect from 24 April 2023 with conduct given as the reason for his dismissal by the Respondent employer. The Respondent had concluded that the Claimant had committed gross misconduct as a result of several, allegedly unauthorised, absences from his shift. The Claimant's defence was that he said that he had a verbal agreement with his manager to the effect that he could leave site when required due to

his son's unpredictable behaviour which was directly linked to his son's disability of autism.

3. The Claimant's case is that the decision to dismiss him gave rise to an unfair dismissal and disability discrimination (by association with his son's disability).

4. The Respondent's defence is the Claimant's absences were unauthorised and that the circumstances of these absences, without the permission of his manager and without clocking in and out, involved a falsification of attendance records, a serious breaches of company rules relating to health and safety, a failure to meet the required standards of a Shift Manager and serious breaches of trust and / or confidence.

5. The case was heard over three days from 31 March 2025. The Judgment dismissing complaints was announced at the end of the hearing with detailed oral reasons being given. After the written Judgment had been sent out to the parties, the Claimant made a request for written reasons for the Judgment on 14 April 2025.

The Claim and the proceedings

6. Following his dismissal on 24 April 2023, the Claimant commenced the obligatory process of early conciliation by notifying ACAS of his prospective Claim on 22 May 2023. ACAS issued an early conciliation certificate on 6 June 2023. The ET1 Form of Claim was filed with the Tribunal on 18 July 2023.

7. At section 8.1 of the ET1 Form of Claim, the Claimant had ticked the applicable box to indicate that he was making a complaint of unfair dismissal. The ET1 Form of Claim had not set out separate grounds of complaint but had attached and relied upon a letter dated 27 April 2023 which was headed on the basis that it was giving notification of the Claimant's appeal / grievance with the grounds of complaint set out as below.

"*1. Too harsh sanction and evidence of others leaving early have not had same or similar sanctions.*

2. Unfair investigation/hearing as panel did not take into account the verbal agreement with manager to leave early.

3. Discrimination by association- needed to leave early as son has a disability".

8. Following a preliminary hearing which took place on 2 July 2024, the resultant Case Management Order finalised the issues to be determined by the Tribunal on the basis that the complaints to be determined were complaints that the Claimant's dismissal amounted to an unfair dismissal contrary to Employment Rights Act 1996 sections 98 and 111 and also amounted to

direct discrimination on the grounds of disability (by association) contrary to Equality Act 2010 section 13.

Relevant law

Unfair dismissal

9. Employment Rights Act 1996 section 98(1) provides that in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show — "*(a) the reason (or, if more than one, the principal reason) for the dismissal, and (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held*".

10. For these purposes, a reason is within scope of Employment Rights Act 1996 section 98(2), so as to be a potentially fair reason for dismissal, if it "*(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do, (b) relates to the conduct of the employee, (c) is that the employee was redundant, or (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment*".

11. Employment Rights Act 1996 section 98(4) provides that "*where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) — (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case*".

12. In *British Home Stores Limited v Burchell [1978] IRLR 379*, the Employment Appeal Tribunal held that, in misconduct cases, Tribunals should consider whether: (1) the employer genuinely believed that the employee was guilty of misconduct; (2) the employer had in mind reasonable grounds on which to sustain that belief; and (3) at the stage at which the employer formed the belief on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

13. In *Iceland Frozen Foods Limited v Jones [1982] IRLR 43*, it was made clear that, in applying the test in *British Home Stores Limited v Burchell [1978]*, the Tribunal must not substitute its decision as to what was the right course for the Respondent to adopt. It must ask itself whether the decision to dismiss the Claimant fell within the band of reasonable responses which a reasonable employer might have adopted.

14. In JJ Food Service Limited v Kefil [2013] IRLR 850, the Employment Appeal Tribunal outlined the four-stage analysis to be adopted by Tribunals, as set out below.

"*In approaching what was a dismissal purportedly for misconduct, the Tribunal took the familiar four stage analysis. Thus, it asked whether the employer had a genuine belief in the misconduct, secondly whether it had reached that belief on reasonable grounds, thirdly whether that was following a reasonable investigation and, fourthly whether the dismissal of the Claimant fell within the range of reasonable responses in the light of that misconduct*" (paragraph 8).

15. In *Boys and Girls Welfare Society v McDonald [1996] IRLR 129*, it was made clear that there is always an area of discretion within which management may decide on a range of disciplinary sanctions, all of which might be considered reasonable. It is not for the Tribunal to ask whether a lesser sanction would have been reasonable, but whether or not dismissal was within the range of reasonable responses open to an employer.

16. In terms of the extent of the investigation required, in *Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23*, the Court of Appeal held (at paragraph 30) that the band of reasonable responses test applies as much to the question of whether the investigation into the suspected misconduct was reasonable in the circumstances, as it does to the reasonableness of the decision to dismiss.

17. In Whitbread plc v. Hall [2001] ICR 699, the Court of Appeal confirmed that the band of reasonable responses test applied to the issue of procedural fairness, as set out below.

"*Section 98(4) of the 1996 Act requires the Tribunal to determine whether the employer 'acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee' and further to determine this in accordance with the 'equity and the substantial merits of the case'. This suggests that there are both substantive and procedural elements to the decision to both of which the 'band of reasonable responses' test should be applied*" (paragraph 16).

18. In *Taylor v OCS Group Limited [2006] ICR 1602*, the Court of Appeal stressed that the Tribunal's task under Employment Rights Act 1996 section 98(4) is to assess the fairness of the disciplinary process as a whole. This was in the context of considering the extent to which procedural defects at an earlier stage of the process might be cured by the employer's appeal process. The Court of appeal gave the guidance set out below.

"*The use of the words "rehearing" and "review", albeit only intended by way of illustration, does create a risk that employment tribunals will fall into the trap of deciding whether the dismissal procedure was fair or unfair by*

reference to their view of whether an appeal hearing was a rehearing or a mere review. This error is avoided if employment tribunals realise that their task is to apply the statutory test. In doing that, they should consider the fairness of the whole of the disciplinary process. If they find that an early stage of the process was defective and unfair in some way, they will want to examine any subsequent proceeding with particular care. But their purpose in so doing will not be to determine whether it amounted to a rehearing or a review but to determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage" (paragraph 47).

Direct discrimination

19. Equality Act 2010 section 13 provides that 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*".

20. Thus, direct discrimination takes place where a Claimant is treated less favourably, because of the relevant protected characteristic, than the employer treats or would treat others. This can involve comparing the treatment of a Claimant with that received by an actual comparator, or comparing the Claimant's treatment with that which would have been received by a hypothetical comparator.

21. It is to be noted that the effect of section 13 of the Equality Act 2010 is that the less favourable treatment simply has to be because of a protected characteristic; it does not actually have to be a protected characteristic of that complainant. Thus, the legislation protects those who, although not themselves disabled, nevertheless suffer direct discrimination owing to their association with a disabled person.

22. Paragraph 3.19 of the Equality & Human Rights Commission Code of Practice on Employment states that discrimination by association "*can occur in various ways – for example, where the worker has a relationship of parent, son or daughter, partner, carer or friend of someone with a protected characteristic*". The Code of Practice gives the practical example of a father caring for a disabled son and having to take time off work whenever his son is sick or has medical appointments where the "*employer appears to resent the fact that the worker needs to care for his son and eventually dismisses him*", with it being suggested that the "*dismissal may amount to direct disability discrimination against the worker by association with his son*".

23. Section 23(1) of the Equality Act 2010 provides that on a comparison for the purpose of establishing direct discrimination there must be "*no material difference between the circumstances relating to each case*". In the case of *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337,*

HL, Lord Scott explained that this means that "*the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class*". However, it is not a requirement that the situations have to be precisely the same

24. In *JP Morgan Limited v Chweidan [2012] ICR 268*, Elias LJ gave the guidance (at paragraph 5) set out below.

"*In many cases it is not necessary for a tribunal to identify or construct a particular comparator (whether actual or hypothetical) and to ask whether the claimant would have been treated less favourably than that comparator. The tribunal can short circuit that step by focusing on the reason for the treatment*".

25. In every case the Tribunal has to determine the reason for the Claimant having been treated as he or she was. In *Nagarajan v London Regional Transport [1999] IRLR 572*, Lord Nicholls observed that "*this is the crucial question*".

26. In *Gould v St John's Downshire Hill [2021] ICR 1, EAT*, Linden J made it clear that the Tribunal must consider the reason for the actions of the alleged discriminator, as set out below.

"*The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the test is subjective… For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision… [and] the influence of the protected characteristic may be conscious or subconscious*".

27. Equality Act 2010 section 136 provides for a shifting burden of proof, as set out below.

"*(2) If there are facts from which the court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

(3) But subsection (2) does not apply if A shows that A did not contravene the provision".

28. Guidance on the burden of proof was given by the Court of Appeal in *Igen v Wong [2005] ICR 931*. This guidance has subsequently been approved by the Court of Appeal in *Madarassy v Nomura International plc [2007] ICR 867*, and by the Supreme Court in *Hewage v Grampian Health Board [2012] ICR 1054* (at paragraphs 25-32). In *Efobi v Royal Mail Group Limited [2021] ICR 1263*,

at paragraph 26, Lord Leggatt made it clear that Equality Act 2010 section 136 had not made any substantive change to the previous law.

29. The burden of proof starts with the Claimant. It is for the Claimant to prove facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant's relevant protected characteristic. At the first stage, when considering what inferences can be drawn from the primary facts, the Tribunal must ignore any explanation for those facts given by the Respondent and assume that there is no explanation for them. It can, however, take into account evidence adduced by the Respondent insofar as it is relevant in deciding whether the burden of proof has moved to the Respondent. If such facts are established, then the burden of proof transfers to the Respondent to establish on the balance of probabilities that the protected characteristic formed no part of the reasoning for the impugned decisions or treatment.

30. The mere fact that the Claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy the first stage of the shifting burden of proof. It may be that the employer has treated the Claimant unreasonably. That is a frequent occurrence quite irrespective of the race or age or other protected characteristics of the employee and will not, by itself, be enough to shift the burden of proof (see *Bahl v The Law Society [2004] IRLR 799*, and *Zafar v Glasgow City Council [1998] IRLR 36*).

31. In *Madarassy v Nomura International plc [2007] ICR 867*, the Court of Appeal emphasised that there must be something more than simply a difference in protected characteristic and a difference in treatment for the burden of proof to shift to the Respondent. Mummery LJ gave the guidance set out below.

"*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*".

32. In *Hewage v Grampian Health Board [2012] ICR 1054, SC*, Lord Hope stated that it was important not to make too much of the role of the burden of proof provisions as set out below.

"*They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other*" (paragraph 32).

33. It is not necessary in every case for a Tribunal to go through the two-stage procedure. In some cases it may be appropriate for the Tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of

considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the shifting burden of proof (see *Brown v Croydon LBC [2007] IRLR 259, CA*, at paragraphs 28 to 39).

34. However, in *Anya v University of Oxford [2001] ICR 847, CA*, the Court of Appeal pointed out (in a case dealing with race discrimination) that very little direct discrimination is today overt or even deliberate so that what the relevant authorities "tell tribunals and courts to look for, in order to give effect to the legislation, are indicators from a time before or after the particular decision which may demonstrate that an ostensibly fair-minded decision was, or equally was not, affected by racial bias".

35. We were also referred by the Claimant to the case of *Follows v Nationwide Building Society (2021) unreported*, which was a decision of the Employment Tribunal sitting in London Central arising out of a redundancy process in which there was a requirement for managers at the claimant's level to be office-based whereas the claimant needed to work from home as she was the principal carer for her disabled mother. The Claimant succeeded with complaints of unfair dismissal and indirect associative disability discrimination but not direct associative discrimination. We were satisfied that this was a decision on the different facts of that case, and so did not assist in determining the case of Mr Shaer.

Evidence

36. In terms of documentary evidence, the Tribunal was provided with a Bundle of 296 pages. An additional bundle of 12 pages was produced by the Respondent shortly before the hearing. The Tribunal ascertained from the Claimant that there was no objection to this additional Bundle being produced.

37. In terms of witness evidence, the Tribunal had a Statement of Evidence from the Claimant who also gave evidence orally. The Claimant also relied upon a written Statement of Evidence from a former colleague, Adrian Price, who worked for the Respondent as a Project Manager, and who attended the disciplinary and appeal meetings with the Claimant. Adrian Price did not give oral evidence. The Claimant also relied upon five written character references setting out the opinions of the authors as to the Claimant's various qualities including his trustworthiness and reliability.

38. The Respondent relied upon a Statement of Evidence from Elton Jarvis, who worked for the Respondent as a General Manager until October 2023, and who had conducted the appeal hearing. Elton Jarvis also gave oral evidence. The Respondent also relied upon a written Statement of Evidence from Mubasher Ahmed, a Senior HR Business Partner for the Respondent, who had attended the appeal to provide HR advice and assistance. Mubasher Ahmed did not give oral evidence.

39. The Tribunal agreed that it would take into account the written evidence of those witnesses who did not give oral evidence but that the weight to be attached to their evidence would reflect the fact that they had not been tested or questioned on their evidence.

Findings of fact

40. The Claimant commenced employment with the Respondent on 25 June 2007. He provided loyal service for nearly 16 years. At the time of his dismissal, he was employed as Shift Manager. Prior to his dismissal he had had a clean disciplinary record.

41. The Claimant and his wife have a son who had been diagnosed with autism as set out in the report that was in the Bundle. They also have a younger daughter.

42. The Claimant worked full time hours from Monday to Friday. Before August 2022, he had been working Thursday to Sundays, which had made it easier to care for his son's needs. His wife also worked for the Respondent and her hours had also changed in 2022, from part-time to full-time.

43. The Claimant reported directly to Reg Finn, a General Manager. Two Supervisors reported directly to the Claimant, namely Shaun Hepherd and Kevin Moore.

44. The conduct in issue arose in late March 2023 when Mr Finn needed to get hold of the Claimant and went to the warehouse, as described in his investigation interview from 6 April 2023. He asked the two Supervisors where the Claimant was and was told that the Claimant was on the school run. This was confirmed by the Respondent's security with it being suggested that this was not unusual. The following day, Mr Finn asked security to check CCTV for the past few days so that he could establish if this was a regular thing. This established, as confirmed by images from the CCTV which were in the Bundle, that the Claimant had left the site on ten separate days between 1 March 2023 and 23 March 2023. Four of the occasions were shortly after 8 am in the morning with the Claimant returning between 47 and 53 minutes later. Five of the occasions were around 3 pm in the afternoon with the period of time for which the Claimant was away from the site varying between 53 minutes and 1 hour 41 minutes. The final occasion was on 16 March 2023 when the Claimant was away between 5:41 pm and 7.07 pm.

45. The CCTV footage also established that the Claimant did not clock out or clock back in and that he also failed to press a randomiser button which was part of the system for searching people leaving the site.

46. The Claimant was suspended on 6 March 2023 pending an investigation into an allegation of unauthorised leaving of the site during scheduled shifts. The letter indicated that the allegations potentially amounted to gross misconduct.

47. An investigatory interview was arranged for 6 April 2023 which was conducted by Ula Lesniewska, an Inventory Operations Manager. The explanation given by the Claimant was that "*I must sometimes drop and pick the kids up from school*" and he explained that when "*the wife is on the early shift she is really struggling*" so "*I go and pick them up to save her the hassle*". On the occasions when he did the school run in the morning, he explained that it "*depends on how my wife is feeling when she wakes up*" and she "*asks are you able to take the kids to school*".

48. Not all of the occasions involved doing the school run. On 14 March 2023, the Claimant suggested that he had left for a GP appointment. On 16 March, in the evening, he had left because he had needed to go home with the explanation being that "*it's a conversation I had at home with my wife*".

49. The Claimant suggested that he did not see any issue with his absences as he did more than 37.5 hours per week so that he claimed that "*the business owes me a lot of hours so I use these as banked hours a*nd (Reg Finn) *is aware of that*".

50. In relation to the issue as to whether he had authorisation to leave site, the Claimant's answer was as below.

    "*Not really. It was an agreement from before. Sometimes I need to leave, and I don't ring Reg. I do tell the supervisors I will be off site. I don't ring Reg every time I leave site*".

51. When asked as to why he did not speak with his manager and "*have this agreed for every time you leave shift*", the Claimant agreed that "*I probably should have done it every time*".

52. In as far as the Claimant was suggesting that there had been an agreement between himself and Reg Finn, this related to a conversation in August 2022 when the Claimant suggested that "*I told him that sometimes I will have to leave and come back*" and "*if I need to make up the hours I will do this*"

53. The Claimant also accepted that he did not clock out when he left the shift or clock back in when he returned. The reason for not clocking out was that "*I don't think about doing this*". He referred to this as a "*bad habit*". He also described not pressing the randomiser as being a habit.

54. In the investigatory interview it was suggested to the Claimant that it was "*site policy that everyone leaving the warehouse must follow this process, no matter what time you leave*" and the Claimant had agreed, stating that he was aware of the policy but that "*I just don't think about it and go if I'm rushing*". He also accepted that there had been an e-mail dated (28 November 2022) from Reg Finn about needing to clock in and clock out (and the e-mail made it clear that this applied mid shift as well).

55. Whilst the CCTV evidence of the Claimant leaving the site during shifts came from March 2023, he accepted that, if the CCTV footage was checked for previous months, there would be other instances of this happening. He accepted that this was a situation which had been ongoing since August 2022 when his wife started to do a longer shift so that he had been leaving the shift "*since then randomly… I have had to go and pick up the kids and drop them off*".

56. The Claimant was clearly referring to doing the school run for both his children, not just his son. There was no reference in the investigatory interview to having to do the school run or needing to attend his son because of his son's disability.

57. In his oral evidence, the Claimant explained that he had not mentioned that he needed to leave shifts due to his son's autism because he had not wanted to share personal information with the investigating manager as he was concerned that it would not be treated by her with appropriate confidentiality.

58. The Tribunal was unconvinced by this explanation for not having explained that his son's disability was behind any need to leave the site mid-shift, given that the Claimant had been willing to provide the investigating manager with personal medical information regarding his wife to explain his reasons for doing school run.

59. The investigating manager conducted an interview with Reg Finn. Mr Finn had made it clear that if one of his direct reports had needed to leave the site, he would have expected to have been made aware of this, where possible, and would have expected the member of staff to leave the site in the normal manner by clocking out through security. If the member of staff had not been able to find Mr Finn, or contact him by telephone, then he would have expected an e-mail or text and, if not this was possible, he would have expected to be told following the return to the site.

60. Reg Finn also made it clear that he had not given the Claimant permission to leave the site in the middle of a shift. Mr Finn stated that the only conversation about leaving the site which had occurred had been on an occasion, which Mr Finn said had been at the start of the year (although the Claimant was to say that this conversation was in September), when the Claimant's car had broken down and the Claimant advised that he would have to leave the site because he had to collect his children and do the school run. A week or so later, Mr Finn checked with the Claimant that everything had been resolved and had been advised that it had been resolved. Mr Finn was clear that the Claimant did not have authority to leave the site multiple times. Had such authorisation been given, then it would have been recorded and would have been for a set amount of time. It would not have resulted in an open-ended arrangement.

61. The investigating manager also interviewed the two Supervisors. Kevin Moore has stated that the Claimant did not always communicate that he was leaving the site during the shift but that he had understood that, when the Claimant was doing so, it was to do the school run.

62. Shaun Hepherd stated that the Claimant would leave the site in the middle of a shift quite regularly and that it had happened much more regularly over the last six months. When asked as to how often the Claimant would tell him that he was leaving the site, Mr Heppard said that it was not often. He would be told if he was in the office, but not if it was on the shop floor. He could only remember being told in relation to morning absences, and not afternoon absences. He understood the reason for the absences to be that the Claimant was doing the school run.

63. By letter dated 12 April 2023, the Claimant was given notification that a disciplinary hearing would be convened to consider allegations of unauthorised absence, falsification of attendance records, serious breaches of company rules relating to health and safety, failure to meet the required standards of a Shift Manager, and serious breaches of trust and / or confidence. The letter provided the Claimant with the evidence gathered during the investigation.

64. A disciplinary hearing took place on 24 April 2023 and was conducted by Darren Hobbs, a Senior Operations Manager, with HR advice and assistance being provided by Charlene Plowditch, Human Resources Business Partner.

65. During the questioning of the Claimant at this disciplinary hearing, it became clear that the Claimant's explanation for leaving the site in the middle of shifts had changed significantly.

66. He now stated that he had a verbal agreement with Reg Finn from 22 August 2022 "*regarding my disabled kid who is autistic to leave for school run as required because of his behaviour, so I leave site when his behaviour is unpredictable*".

67. When asked about the occasions highlighted in March 2023, the Claimant stated that "*my son was very erratic during this period and so I need to be with him*". He explained that his wife "*will call and says I need you here now*" with the result that "*I need to go straight away*". The explanation given was also to the effect that "*I had a family emergency, told my superiors and left quickly*".

68. The reason for not clocking in and out when the Claimant left in the middle of a shift was explained on the basis that when "*I get the phone call, I go on autopilot and just go*" and "*I just panic*".

69. The Claimant was relying upon the conversation which he stated that he had had with Reg Finn in August 2022 as amounting to an agreement that he

could leave the site "*whenever* (he) *needed*". He stated that "*I have* (an) *agreement with Reg on 22nd August about my son, to have to leave at short notice for school runs due to his unpredictable behaviour*". Later on, he referred to this verbal agreement with Mr Finn as being a "*reasonable adjustment, to leave early with my manager*('s) *knowledge*". He made reference to the Equality Act 2010 and his association with his son's disability as a protected characteristic.

70. The potential health and safety ramifications involved in the Claimant leaving in the middle of a shift were discussed with the Claimant. In particular the concern that, if there was a need to evacuate the building, for example because of a fire, then this could give rise to individuals being put in danger if it was thought that the Claimant was still in the building. The response of the Claimant was that "*I informed my supervisors when I leave*" but he added "*I'm not saying it's right*". The evidence of the Supervisors had suggested that they were not always told that the Claimant had left.

71. The Claimant referred to having a breakdown of the hours which he had spent in the business since August 2022 on the basis that, because he did not get paid overtime, he was entitled to time off in lieu instead.

72. The Claimant was also suggesting that the timing of the disciplinary process was linked to a redundancy process which involved a proposal to delete a level of management at the Claimant's level of Shift Manager so that the Claimant had been informed on 3 April 2023 that he was at risk of redundancy.

73. During the disciplinary hearing, the Claimant referred to having a list or lists of other individuals who did not always clock in or clock out correctly. These were effectively daily e-mails which were sent out by way of an automated report to the management team identifying individuals who had failed to clock in or clock out correctly. However, this was only in relation to not clocking in or out at the start or end of a shift and was not highlighting individuals who were leaving in the middle of a shift. The Claimant was asking as to "*why aren't these people on this list being investigated*", with the reply being that the disciplinary hearing was not for the purpose of discussing other individuals unrelated to the Claimant's disciplinary case.

74. The Claimant did raise an issue during the disciplinary hearing as to a conflict of interest on the basis of the investigating manager having a personal relationship with one of the Supervisors who was interviewed as a witness, namely Shaun Hepherd. Charlene Plowditch had responded by saying that "*the investigation wasn't about him*". The point the Claimant made was that both Supervisors were aware that he was on the school run and "*how to contact me if they needed*". Certainly, the evidence of both Supervisors was consistent with a general awareness that the reason for the Claimant not being on site was that of attending the school run. Shaun Hepherd, when

asked as to whether there had been any situations on site where a problem had occurred with which the Claimant's assistance was needed and he had not been on site, had answered that it was not "*really a problem, but there are times I have had to call him*", which effectively accepted that he had a number for the Claimant. He said that it was "*not usually urgent but it could be if someone wants a half day and I wanted to ring him to check it's okay*". This was the only part of the interview record with which the Claimant specifically took issue in that he stated that he "*did not believe a supervisor would need to contact me for holiday authorisation for the colleague*".

75. During the disciplinary hearing, the Claimant was specifically asked as to his length of service, and in answering made it clear that there had never been any issues with his conduct during this period of 15 years.

76. At the end of the disciplinary hearing the Claimant was asked if he thought that he had the opportunity "*to put across your case today and the chance to be properly supported*" and agreed that he had.

77. The disciplinary hearing was then adjourned at 12.26 pm and reconvened at 1.41 pm when the decision was announced with the reasons for that decision. When the hearing reconvened, it was explained that the adjournment had been necessary as there was a lot of information and mitigation to review. It is also clear that at least Darren Hobbs had used some of the break in order to leave the site and get some sustenance.

78. The decision was announced as being that the disciplinary allegations were found to be proven and to dismiss the Claimant for gross misconduct.

79. The dismissal decision was confirmed in a dismissal letter dated 27 April 2023. A number of findings or conclusions can be extracted from the dismissal letter, namely that:

    (1) Darren Hobbs was not satisfied that any absence was authorised;

    (2) effectively, not clocking in or out whilst the Claimant was away from the site in the middle of a shift "*has led to a false record of your time on site*" although "*I could not determine whether this has been a conscious decision on your part*";

    (3) this was a serious breach of health and safety rules in that the fire evacuation process involved reliance being placed upon attendance records as a register of who was on site;

    (4) a senior manager such as the Claimant would have been expected to understand the importance of making sure that absences were authorised and processes were followed, with it being stated that "*I would expect you to understand we can't have managers disappearing from site with regularity*"; and

(5) the above findings gave rise to the conclusion that there had been a serious breach of trust and, in as far as the Claimant had considered himself to be a trusted employee, these findings had called that trust into question.

80. The Claimant raised an appeal by letter dated 27 April 2023 with the grounds of complaint being that:

(1) the sanction was too harsh given the evidence of others leaving early which had not resulted in the same or similar sanctions;

(2) unfair investigation / hearing as the decision maker did not take into account the "*verbal agreement with manager to leave early*"; and

(3) discrimination by association on the basis that the Claimant "*needed to leave early as son has a disability*".

81. The grounds of appeal were expanded upon in a detailed Solicitor's letter dated 5 May 2024.

82. On 16 May 2023, the Claimant attended an appeal meeting accompanied by Adrian Price. Elton Jarvis, General Manager, conducted the meeting and Mubasher Ahmed, HR Business Partner, took minutes of the meeting. The appeal meeting was conducted on the basis of being a review of the decision by reference to the grounds of appeal, rather than a rehearing of the disciplinary case.

83. At the beginning of the appeal meeting, based on the Solicitor's letter, the grounds of appeal were identified as being the grounds set out below.

"*1. You say you had a verbal agreement with your Line Manager, Reg Finn from 22nd August 2022 in relation to leaving site to deal with your child's unpredictable behaviour which you say is related to his Autism.*

2. You have not deliberately failed or refused to clock in or out on the occasions you have left site.

3. Your explanation as to why you did not clock out & in was not considered by Darren Hobbs, Senior Operations Manager and disciplinary chair.

4. Other people have also failed to follow the clocking in/out process.

5. In relation to the serious breach of the Company rules relating to health and safety, Darren Hobbs did not consider your explanation for why you did not clock out and in.

6. You informed the site Shift Supervisors each time you were leaving site and the site security witnessed you leaving and therefore they were all aware that you were not at work on these dates/times.

7. You do not feel you failed to meet the required standards of a Shift Manager and that any flexible working arrangement should have been formalised by your Line Manager. You say this was a reasonable adjustment and not a flexible working agreement.

8. Lip service was paid to your submissions and the evidence that you were trying to produce in support of these submissions.

9. The decision to dismiss you was predetermined.

10. You feel the reason to dismiss you was so that the business does not have to make you redundant and pay any entitlement to Statutory Redundancy Pay.

11. No consideration has been given to your clean disciplinary record over your 15 years' of employment … and the disciplinary chair spent time at Greggs during the adjournment. You say that during this time, he never signed out or signed back in".

84. During the appeal meeting, Elton Jarvis went through each of these points appeal, in turn, with the Claimant.

85. During the appeal meeting, the Claimant was asked about his explanation "*you received a call on each occasion when you had to leave site*" and was asked if he could provide any evidence of this, such as phone logs. The Claimant answered "*not really … I can have a look later*". He explained that his "*wife would call, and she would say he is behaving erratically and* (I) *need to go so I can have a calming influence on the boy*". The Claimant said that he could not provide a log of the calls made by his wife "*right now*" and it was agreed that he would do so within 48 hours, although this ultimately did not happen.

86. When asked as to the investigation interview where "*you state that the reasons why you are leaving site is because you are doing the school run – there is no mention of dealing with emergencies relating to your child, can you please explain*", the Claimant explained that this was "*because I don't trust this person, she is not trusted by me*", which was referring to the interviewer, and "*I was not willing to open up my situation with my son because she has a big mouth*".

87. When asked as to the evidence of Reg Finn that there had been no agreement for the Claimant to leave the site because of his son, the Claimant suggested that Mr Finn "*doesn't remember, and he hasn't got a strong memory*" and suggested that this was demonstrated by Mr Finn having referred to the conversation about car problems having taken in place in January whereas the Claimant stated that this was an issue which had happened in September.

88. The Claimant provided Mr Jarvis with lists of other individuals who had not been clocking in and out incorrectly. Mr Jarvis examined the list and suggested that the evidence showed "*those people who clocked in but then 12 hours had lapsed before they had clocked out so it suggests that they have not clocked out and it is then sending an automatic report for the manager to look into*" which he suggested was "*somewhat different to what your situation*". He said that they were "*not here to discuss other people but thanks for flagging it to us and we will look into this and investigate*".

89. Any subsequent investigation did not take place as part of the process of considering the Claimant's appeal. The oral evidence of Elton Jarvis suggested that there was a follow-up meeting at a later point in time and that the issue had been raised with the managers of the individuals listed as not having clocked in or out properly. However, he was not aware of any further action having been taken against other individuals. He explained that further action would have been unlikely unless the information regarding individuals not clocking in or out had caused other concerns to be highlighted.

90. The Claimant was issued with the outcome of his appeal on 30 May 2023. The appeal decision letter dealt separately with each of the eleven issues identified as being raised by the Claimant. The reasons set out in the appeal letter noted that the Claimant's version of events differed at each stage of the process and stated that this inconsistency suggested that he may not have been completely transparent with the Respondent in explaining his actions. Elton Jarvis rejected the Claimant's case that any absence was authorised. Whilst noting that Reg Finn had no recollection of any such agreement, he also pointed out that it would be contrary to policy for a manager to have entered into such an agreement without documented evidence or having taken HR advice, since the effect of the agreement was suggested as being for him to take an undefined amount of time off work for an unlimited number of occasions. In addition, the Claimant had not "*been able to provide any evidence of hours worked in relation to time you have taken off work*". He noted the unwillingness and failure of the Claimant to provide any log by way of evidence of having received calls from his wife on the days in question.

91. By the time of the Tribunal hearing, there was evidence available showing the extent of any calls made by the Claimant's wife to the Claimant on the days in question in March 2023. The Tribunal notes that this evidence was clearly inconsistent with the explanation which the Claimant had put forward during the disciplinary process regarding leaving the site because of calls from his wife, or in a panic, or because of an emergency. Most days, there had been no such prior call. On the few days where the telephone records show that there had been a call prior to the Claimant leaving the site in the middle of a shift, there had been a significant lapse of time before the Claimant had actually left the shift. In his evidence to the Tribunal, the Claimant's case on

the occasions when there was no prior call, was that he left the site as a result of prior arrangements made with his wife for him to do the school run. Where there had been a call, and he then delayed before leaving site, this was because he had made sure that everything was in order on the site before leaving. In addition to undermining his case as to his reasons for having left the site, this also undermined his explanation for not having clocked in and out when he left and returned, which he had been suggesting was because of the urgency or pressure of the situation.

92. The Tribunal was also able to ask the Claimant about the timesheets upon which he had been relying and which he had been claiming showed the time that was owed to him as a result of having worked longer than his contractual hours. Effectively, for each month between August and February, the Claimant had recorded his clocking in time and clocking out time and calculated, for each day, the amount of time by which, on the basis of these two entries, he had exceeded his contractual hours. Thus, for each month, the Claimant had calculated, on this basis, the time off in lieu that he considered that he was owed. The Respondent, through the evidence of Elton Jarvis, took issue with any suggestion that the Claimant became entitled to time off in lieu as a result of each occasion when he arrived for a shift early or left late. However, the issue which concerned the Tribunal was that in calculating the amount that he was owed by way of time off in lieu, the Claimant had made no allowance for the time that he had spent away from the site, even on his own case, during various shifts, with all of the evidence suggesting that this had been taking place going back to August or September 2022. Effectively, the Claimant was using an incorrect record as to the amount of time that he had spent in the workplace, and was using this as a basis for claiming to be entitled to time off in lieu, with the effect that the amount claimed as time off in lieu was an incorrect figure, leaving aside the issue as to whether there was any such entitlement in the first place.

Conclusions

93. In arriving at its conclusions in relation to the Claimant's complaints, the Tribunal referred to the List of Issues formulated in the Case Management Order of 2 July 2024 and considered the questions identified in the List of Issues as needing to be answered in order to determine the outcome of the complaints.

94. What was the reason or principal reason for dismissal? The Respondent said that the reason was conduct. The Tribunal needed to decide whether the Respondent genuinely believed the Claimant had committed misconduct.

95. The Tribunal was satisfied that the reason for dismissal was conduct. This was the reason given in the dismissal letter. At some stages in the case, it seemed to be the Claimant's case that this was a convenient excuse to get

rid of him or amounted to a sham reason. This was suggested to be because there was a redundancy procedure which was ongoing, which would potentially have resulted in employees at the Claimant's level of management being made redundant, so that dismissing for conduct reasons involved avoiding having to make any kind of redundancy payment. Alternatively, he suggested that dismissing him was an exercise in singling him out because other individuals within the organisation such as Reg Finn had their reasons for doing so.

96. Ultimately, the Tribunal was satisfied that the Respondent genuinely believed that the Claimant had committed misconduct. In particular, the Tribunal was satisfied that the matter would not have been dealt with through a formal disciplinary process, if, for example, Reg Finn had actually given the Claimant permission to be absent at the point in time when he was absent. Similarly, we were satisfied that the individuals who dealt with the process at the investigatory, disciplinary and appeal stages, dealt with the matter on the basis that there were serious concerns with regard to conduct arising out of the circumstances which had come to light in March 2023.

97. Were there were reasonable grounds for that belief? The Tribunal was satisfied that there were reasonable grounds for the Respondent's belief as to the conduct for which the Claimant was dismissed. The evidence which had been assembled demonstrated that the Claimant had been regularly leaving the workplace in the middle of a shift without having obtained the permission of his manager. These were regular and lengthy absences. The explanation for the absences was unsatisfactory in that the Claimant had originally suggested that the reason was to do the school run in relation to both children because of difficulties that his wife was having, whereas his case became that he had been leaving the workplace as a result of calls from his wife to attend urgently to the needs of his disabled son. In addition to the inconsistency and lack of transparency regarding his reasons for leaving the workplace, there was a lack of evidence, such as phone records, to support the explanation which the Claimant had been putting forward at the disciplinary stage, with such evidence not being forthcoming even when explicitly requested at the appeal hearing.

98. In leaving the workplace, the Claimant had not been clocking in or clocking out so that there was no record of the time that he was having off work in the middle of his contractual hours. This did also have the consequence that the attendance records which the Respondent had regarding the Claimant's attendance at work and the hours which he had worked were inaccurate. In this sense, the records were false. The records had effectively been falsified through the Claimant not clocking in or clocking out when he should have been clocking in or out. The need to do so had been made clear in an e-mail from Reg Finn in November 2022.

99. The Respondent also had reasonable grounds for concluding that this gave rise to serious health and safety issues in that, if fire evacuation procedures were based on records as to whether the Claimant was still in the workplace, and those records were wrong, then the consequence could be that individuals might be put at risk in an emergency if it was thought that the Claimant was still in the building.

100. Similarly, there were reasonable grounds for the Respondent to conclude that the Claimant had fallen short of the standards which would have been expected of a Shift Manager in these circumstances. He had effectively been absenting himself from work in the middle of the working day without authority. Those were not the standards to be expected of a manager who was managing many other employees. It also followed that, if these were unauthorised absences, then it gave rise to a breach of trust, compounded by the inconsistency and lack of transparency on the part of the Claimant as to the explanation for his absences.

101. As such, the Tribunal was satisfied that there were reasonable grounds for the Respondent to arrive at the conclusion which it did in relation to the disciplinary allegations against the Claimant.

102. At the time that the belief was formed had the Respondent carried out a reasonable investigation? Viewed in employment law terms, the need to have carried out a reasonable investigation effectively needs to have been met at the point in time when the decision to dismiss is made and, if any review of the decision at the appeal stage identifies any need for further investigation, then that further investigation might reasonably need to be undertaken.

103. The Tribunal was satisfied that the initial investigation was reasonably thorough. Through interviewing the Claimant, the Claimant's manager, and the two Supervisors who worked under the Claimant, the investigatory process established that the Claimant had been absent from the workplace, when he should have been working, for significant periods of time, going back to August or September 2022. The key issue in the disciplinary case focused on whether this was authorised absence or unauthorised absence. In this respect, the Respondent had the evidence from the manager who would have given permission, and would have been responsible for giving permission, had permission been given or sought. The Respondent also had the CCTV footage covering the ten most recent absences from the workplace in March 2023 which established a pattern of the Claimant leaving the workplace without clocking in or clocking out. On the basis of the evidence gathered at the investigatory stage, there was clearly a disciplinary case to answer.

104. During the course of the disciplinary hearing, the Claimant did refer Darren Hobbs to evidence which he had brought with him, including evidence in relation to his son's disability and evidence in relation to other individuals

failing to clock in or clock out at the beginning or end of shifts, as well the Claimant's own records as to time worked for the purposes of calculating any purported entitlement to time off in lieu. The Tribunal was satisfied that further investigation was not reasonably required in relation to that evidence. In relation to the Claimant's son's disability, the disciplinary decision was made on the basis that it was accepted that the Claimant's son had such a disability. In relation to the position of other individuals failing to clock in or clock out, the Respondent was reasonably justified in approaching this evidence on the basis that this was separate from the Claimant's disciplinary case. This was not evidence which, in itself, established that any of the individuals who had been listed as not clocking in or clocking out had been absent from the workplace without authority. The fact that the Claimant may have arrived early or left late or worked extra time in the Respondent's business at other points in time did not, in itself, entitle him to be absent from the workplace, when he should have been in the workplace, without permission from his manager. In fact, further scrutiny of this evidence would only have undermined this part of the case being advanced by the Claimant at the disciplinary stage, in that it would have established that the Claimant was not taking into account the time which he had away from the site in the middle of shifts in calculating any (disputed) entitlement to time off in lieu.

105. At the appeal stage, Elton Jarvis gave the Claimant the opportunity to provide further evidence in relation to the phone calls which had supposedly prompted him to leave the site. Mr Jarvis sought to pursue this area of further enquiry, but the onus was on the Claimant to produce the records of phone calls made by his wife. Despite being given the opportunity to do so following the hearing, he did not do so. In the circumstances, it was reasonable for Mr Jarvis to proceed on the basis of such evidence not having been provided by the Claimant. Had this evidence been available to Mr Jarvis (or Mr Hobbs) then, again, it would only have undermined further the Claimant's defence in terms of the explanation which had been put forward at the disciplinary hearing regarding the need to leave work at short notice due to urgent family reasons.

106. By reason of the matters set out above, the Tribunal was satisfied that the Respondent had carried out a reasonable investigation for the purposes of the decision to dismiss the Claimant.

107. Did the Respondent otherwise act in a procedurally fair manner? The Tribunal was satisfied that the Respondent had acted procedurally in a way which was within the band of reasonable responses. The Respondent carried out an investigation which involved putting the concerns to the Claimant and giving him an opportunity to provide an explanation. On the basis of that investigation, there was a disciplinary case to answer. As such, a disciplinary meeting was convened with the Claimant being given notice of that meeting and the right to be accompanied. In particular, he was given notice of the

disciplinary case which he had to answer through the allegations being set out in the letter convening the meeting and through the letter enclosing the evidence which had been gathered as a result of the investigation. The Tribunal was satisfied that the disciplinary hearing which then took place was a hearing at which he had the opportunity to answer the case against him. He was subsequently given a right of appeal, and the Tribunal was satisfied that the appeal hearing proceeded in a way which procedurally was within the band of reasonable responses.

108. The Claimant did raise an issue during the disciplinary hearing regarding the investigating manager having a personal relationship with one of the Supervisors, Shaun Hepherd, who was interviewed as a witness. However, the role of the investigating manager was that of a fact-finding role rather than a decision-maker determining whether the Claimant was guilty of the disciplinary allegations and, if so, the appropriate sanction. She had simply interviewed the Claimant, his manager, and the two Supervisors, with a note taker being in attendance to take a note. There was no investigation report as such, so that the evidence collated which was forwarded to the disciplinary stage was simply that of the records of the interviews and the CCTV images. The investigating manager had been responsible for the letter confirming the Claimant's suspension, but the suspension was a neutral act in that the letter had specifically stated that the suspension did not constitute disciplinary action or imply any assumption of guilt. Ultimately, the Tribunal was not satisfied that any unfairness to the Claimant derived from the fact that the version of events of one of the Supervisors had been recorded as a result of interview questions being asked by someone with whom he had a personal relationship. Mr McDevitt made the point, on behalf of the Respondent, that the evidence given by this witness was not significantly inconsistent with that of the Claimant himself. It was also largely corroborated by that of the other Supervisor. The case did not turn on the evidence of the Supervisors as to whether the absence was authorised. Had there been any need for further investigation, then further investigation could have been undertaken at the stage of the disciplinary hearing.

109. The Claimant has also raised issues regarding having a lack of trust in the investigating manager. He did not object at the time to the investigating manager conducting the interview or the investigation. The issue in respect of a lack of trust has subsequently been raised in an attempt to explain the Claimant's failure to provide the explanation at the investigatory stage which he later provided at the disciplinary stage. The explanation did not make sense in the light of the Claimant's willingness to provide sensitive medical information regarding his wife to the investigating manager.

110. The Claimant has also raised an issue regarding the shortness of the period of time taken to arrive at the decision to dismiss. The hearing is recorded as

having been adjourned at 12.26 am at the point when the Claimant had confirmed that there was nothing that he would like to add before a decision was made. The hearing then reconvened 75 minutes later, when the decision was announced and brief reasons were given in relation to each allegation which was being upheld, with those reasons recorded in the note of the disciplinary hearing. Indeed, at the point when the hearing was reconvened, reference was made the adjournment as having been substantial "*as I felt there was a lot of information and mitigation to review*". The Claimant had clearly seen Darren Hobbs leave the premises in order to get some form of refreshment as it was also lunchtime, so was aware that the full length of the adjournment had not been spent in dealing with his disciplinary case. However, the Tribunal was not satisfied that the issue he has raised as to the length of any deliberation has any substance to it, as it would have been open to a reasonable employer, in the circumstances of this case, to announce the decision either straight away or after a shorter period of time. There would have been the opportunity, prior to the hearing, to consider the evidence gathered as a result of the investigation, which established a disciplinary case to answer, and having heard the explanation advanced in the course of the disciplinary hearing, it was reasonably open to an employer to conclude the disciplinary case was well-founded.

111. Was dismissal within the range of reasonable responses? It is well established that it is not the role of the Employment Tribunal to decide what sanction it would have arrived at had it conducted a disciplinary hearing in relation to the evidence before the Respondent. The issue is whether or not dismissal was within the band of reasonable responses open to an employer. The Tribunal was satisfied that dismissal was within the band of reasonable responses. The Claimant had been found guilty of disciplinary offences which were within the scope of the examples, given within the Respondent's disciplinary procedure, of potential gross misconduct for which dismissal could be the outcome. The issue at the core of the disciplinary case against the Claimant was that he had been absent from the workplace for significant periods of time without the permission of his manager, and without his manager even knowing of the situation. This did give rise to significant issues of trust, with such issues also being amplified by the inconsistent explanations given by the Claimant regarding his absences from the workplace, which were indicative of a lack of transparency. The Tribunal was satisfied that dismissal was within the band of responses open to a reasonable employer.

112. In arriving at this decision to the effect that dismissal was within the band of reasonable responses, the Tribunal recognises that the Claimant was somebody with over 15 years of service and a clean disciplinary record. However, even where an employee has a clean disciplinary record over many years, it will be rare for dismissal to be outside the band of reasonable responses in respect of a disciplinary offence where the conduct in issue

amounts to gross misconduct and potentially undermines the trust which an employer has in an employee. This was not a case where dismissal was outside the band of reasonable responses.

113. Similarly, the Tribunal also took account of the Claimant's suggestion that there was disparity of treatment. However, the Tribunal did not think that this was a case where it could be said that there was any unfair disparity of treatment given that there was nothing to indicate that the circumstances of other individuals who had been failing to clock in or clock out at the beginning or end of their shifts, rather than in the middle of their shifts, amounted to those individuals being absent from the workplace, during working time, and without permission. The Claimant was not simply being disciplined for not clocking in or out; he was being disciplined for significant unauthorised absences from the workplace which had brought to light, as a further consideration, the fact that he had not clocked in or out at the beginning or end of these absences, so that there was no accurate record of his working time. Similarly, in relation to other individuals leaving the workplace during breaks, there was nothing to indicate that such absences were unauthorised. The Claimant's case was not simply about the Claimant having failed to clock in or clock out when he had left the shift, but it was about the fact that he was absent from the workplace for substantial periods of time, without permission, when he was meant to be working.

114. The Tribunal then turned to the complaint of discrimination which obviously involved considering a different set of questions as identified in the List of Issues.

115. The first question was whether the Claimant treated worse than someone else was treated. For these purposes, there must be no material difference between the circumstances of any comparator and the Claimant's. Where there is nobody in the same circumstances as the Claimant, the Tribunal has to decide whether the Claimant was treated worse than someone else would have been treated. Thus, the Tribunal had to consider the position of a hypothetical comparator; in other words, somebody in the same circumstances as the Claimant but without a son with a disability. The Tribunal was not satisfied that such an individual, facing the same disciplinary allegations as the Claimant, would have been treated more favourably. The Tribunal was satisfied that there was no evidence to suggest that such an individual would have been treated any more favourably. The Claimant has pointed to the fact that there were other individuals not clocking in or clocking out on the basis that the absence of any action being taken against these individuals suggested that he was being singled out by the Respondent. However, the Tribunal was not satisfied that any evidence as to the omissions of these other individuals provided a basis for concluding that the Claimant would have been treated less favourably than a hypothetical comparator. This

was because, in relation to the other cases, there was nothing to suggest that those individuals had been absent from the workplace without permission for significant periods of time when they should have been working.

116. If the Claimant was treated less favourably than any relevant comparator, was it because of his son's disability? This final issue does not technically arise in the light of our decision that the Claimant was not treated less favourably than a relevant hypothetical comparator would have been. However, the treatment which the Claimant complains of as less favourable treatment is that of his dismissal. It was the Claimant who introduced the issue of his son's disability as the reason for his actions at the disciplinary stage of the proceedings, having failed to do so at the investigatory stage. It is significant that, before the issue had been introduced in this way, the Respondent had effectively found that there was a disciplinary case to answer and that that case potentially amounted to gross misconduct, as set out in the letter convening the disciplinary hearing. The fact of the Claimant then introducing this purported reason for his conduct does not, on its own, establish facts from which the Tribunal could conclude that the dismissal was because of the Claimant's association with his disabled son. In any event, the Claimant's explanation was unsatisfactory because it was inconsistent with the explanation given at the investigatory stage where the focus was simply on doing the school run in relation to both of his children. Further, the Tribunal was satisfied, based on the evidence before it, and the explanation given by the Respondent as to the reason for dismissing the Claimant, that the treatment complained of was not because of the Claimant's association with his son as a disabled individual but because of his conduct, as set out in the dismissal letter.

Outcome

117. It follows that the outcome is that the Tribunal must dismiss the complaints of the Claimant, notwithstanding the sympathy which the Tribunal has for his family circumstances.

Approved by
Employment Judge Kenward
Dated 12 May 2025

Sent to the parties on

14 May 2025

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For the Tribunal office

Karl Frankson