EMPLOYMENT TRIBUNALS

Claimant: Mr T H Dulak

Respondent: Next Distribution Ltd

Heard: in Sheffield on 24, 25, 26, 27 and 28 February and, in chambers, on 7 and 15 April 2025

Before: Employment Judge Ayre
Ms B R Hodgkinson
Mr K Smith

Representation

Claimant: In person
Respondent: Stephanie Pye, solicitor

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claim for holiday pay succeeds. The respondent is ordered to pay the sum of £334.40 holiday pay to the claimant, less such deductions for tax and national insurance as it may be required by law to make.

2. The claim for notice pay succeeds. The respondent is ordered to pay the sum of £672 notice pay to the claimant, less such deductions for tax and national insurance as it may be required by law to make.

3. The claim for automatic unfair dismissal is not well founded. It fails and is dismissed.

4. The claim for whistleblowing detriment is not well founded. It fails and is dismissed.

5. The claim for unauthorised deduction of wages is not well founded. It fails and is dismissed.

REASONS

Background

1. The claimant was employed by the respondent as a driver from 17 July 2023 to 12 December 2023. He began ACAS early conciliation on 27 December 2023 and ACAS issued the Certificate on 17 January 2024. The claimant issued his claim on 24 January 2024.

2. A Preliminary Hearing took place on 3 September 2024 at which the issues were identified and case management orders made to prepare the case for this hearing.

The hearing

3. The hearing was listed as an attended or 'in person' hearing in Sheffield. At the claimant's request, he was initially permitted to attend the hearing by CVP. The claimant told the Tribunal that he has now moved out of the local area but is still resident in the United Kingdom and was joining the hearing from a location in the UK.

4. On the first day of the hearing the Tribunal found it very difficult to hear and understand what the claimant was saying over the video link. We suggested to the claimant that he attended the hearing in person. The claimant removed his headset and matters appeared to improve slightly.

5. At the start of the second day of the hearing however, the Tribunal continued to experience difficulties hearing and understanding what the claimant was saying. This was due to a combination of feedback from the video link, an echo, the claimant speaking quickly, and the claimant having a strong accent. One of the members of the Tribunal has a hearing impairment which made it particularly difficult to hear the claimant properly.

6. We discussed with the parties the possibility of the claimant attending the hearing in person or appointing an interpreter. The claimant told us that his first language is Polish, but that he has a sufficient level of English to be able to participate in the hearing without an interpreter. The Tribunal observed that the claimant's written and spoken English is excellent.

7. In the circumstances, we converted the hearing to an attended hearing and the claimant attended in person from 2 pm on the second day of the hearing. The Tribunal was able to hear and understand the claimant clearly for the remainder of the hearing.

8. The respondent had prepared a bundle of documents running to 338 pages. The claimant produced a supplementary bundle running to 12 pages. The respondent also produced an opening skeleton argument and authorities bundle. The claimant produced a written response to the authorities bundle, and a document entitled

'Merged Respondent's Witness Statements' which identified sections of the respondent's witness statements which the claimant said were identical.

9. We also had before us video footage of an incident in the respondent's yard and of the meeting at which the claimant was suspended.

10. We heard evidence from the claimant and, on behalf of the respondent, from:

    1. Leanne Camplin, Transport Assistant Site Manager;
    2. Fiona Krebs, Transport Team Manager;
    3. Akvile Zinkeviciute, Transport Team Manager;
    4. Anthony Raikers, Loss Prevention Officer; and
    5. Magdalena Parczynska, Loss Prevention Officer.

11. The claimant asked if he could bring notes with him to the witness stand. The respondent did not object, and the claimant was permitted to bring notes to the witness stand. The claimant was also permitted to bring a notepad and pen to assist him when answering questions.

12. At lunchtime on the fourth day of the hearing one of the members of the Tribunal had to leave because a close family member had a medical emergency. We adjourned the hearing for the rest of the day. The hearing continued on day five in the presence of all members of the Tribunal panel.

13. Shortly before starting oral submissions, the respondent sent to the Tribunal and the claimant written closing submissions running to 21 pages. The Tribunal was concerned that the claimant should have time to read, consider and respond to those submissions. The Tribunal was conscious that the claimant is a litigant in person and that English is not his first language. The hearing was adjourned for three hours to give the claimant time to consider the respondent's written submissions. The claimant was told to tell the Tribunal if he needed more time. He did not do so.

The issues

14. The issues that fell to be determined at the final hearing were identified at the Preliminary Hearing. At the start of this hearing the respondent admitted that the claimant was entitled to additional holiday pay in the sum of £334.40.

15. In an email sent to the Tribunal on 11 March 2025 the respondent confirmed that it agreed that the claimant's weekly pay was £672.

16. The issues that fell to be determined at this hearing therefore were the following:

<u>Protected disclosures</u>

1. Did the claimant make qualifying disclosures:

i. On 17 October 2023 when he reported an incident at E3 site, namely an accident concerning the light system, to Fiona Krebs and Lindsay Servis; and/or

ii. On 18 October 2023 when he reported by email the same incident and a failure to provide him with the Salvo Safety Policy concerning docking trailers on the bay?

2. Did he disclose information?

3. Did he believe the disclosure of information was made in the public interest?

4. Was that belief reasonable?

5. Did he believe it tended to show that the health or safety of any individual had been, was being or was likely to be endangered?

6. Was that belief reasonable?

Automatic Unfair dismissal (section 103A Employment Rights Act 1996)

7. Was the reason or principal reason for dismissal that the claimant made a protected disclosure?

Whistleblowing detriment (section 48 Employment Rights Act 1996)

8. On 18 October 2023 did the respondent do the following things:

i. At the start of the claimant's shift, was a security officer present in the transport office and did that officer stare at the claimant?

ii. After the claimant was given keys and assigned a job, did Fiona Krebs ask him to attend an outdated review six weeks into employment?

iii. Did James Griffiths and Lynsey Servis follow the claimant to the unit?

iv. Did James Griffiths assault the claimant by grabbing his hand?

v. Did James Griffiths prevent the claimant from taking his personal belongings?

vi. Deceive and falsely imprison the claimant?

vii. Suspend the claimant without informing him of the allegations against him?

9. By doing so, did it subject the claimant to detriment?

10. If so, was it done on the ground that the claimant made a protected disclosure?

Wrongful dismissal / notice pay

11. What was the claimant's notice period?

12. Was the claimant paid for that notice period?

13. If not, was the claimant guilty of gross misconduct or did the claimant do something so serious that the respondent was entitled to dismiss him without notice?

Unauthorised deductions from wages

14. Did the respondent make unauthorised deductions from the claimant's wages in the sum of £332 for an advance?

Breach of contract

15. Did this claim arise or was it outstanding when the claimant's employment terminated?

16. Did the respondent do the following:

    i. Record a meeting on 18 October 2023 without informing the claimant or gaining his consent?

    ii. Refusing to provide the claimant with a copy of the evidence it intended to rely on at the disciplinary meeting?

    iii. Refusing to provide witness statements?

    iv. Refuse to provide CCTV footage evidencing the alleged assault?

    v. Failing to have evidence proving gross misconduct?

17. Was that a breach of contract? Of which term of the claimant's contract?

18. If there was a breach of contract, what loss, if any, has it caused the claimant and how much should the claimant be awarded as damages?

Findings of fact

17. The following findings of fact are made on a unanimous basis.

18. The claimant was employed by the respondent as a driver. His employment started on 17 July 2023.

19. The claimant's offer letter contained the following provisions: "*Along with this message you'll find a 'Statement of Principal Terms and Conditions of Employment' which, together with your new Staff Handbook is your contract of employment with us.*

The Staff Handbook forms part of your terms and conditions of employment. By accepting this offer you are also accepting those terms and conditions of

employment. To view and read the staff Handbook before you accept this offer, please follow this link….

Our disciplinary, capability, grievance and appeals policies can be found in the Staff Handbook…

Your first 6 months with us will be a probationary period, where you'll have regular performance reviews with your manager to see how you're settling in. Take a look at your Staff Handbook to find out more about how this will work….

Your notice period will be 1 week. Take a look at your Staff Handbook for our rules around resignation or termination of employment….

20. The respondent's Employee Handbook states that:

"*The Handbook will answer many of your questions. Read it carefully as section 1 forms part of your Contract of Employment with Next…*

This Handbook applies to all employees of Next Distribution, who are recognised as working in the 'Bargaining Unit' and is a subsidiary Company of Next plc.

This Handbook forms part of your contract of employment…"

21. Section 1 of the Handbook is headed "Terms and Conditions of Employment" and states that "*Your Contract letter forms the Principal Statement of Terms and Conditions of Employment and together with section 1 of this Handbook constitutes your Contract of Employment.*"

22. Section 1 contains a paragraph headed "*Will there be a probationary period when I first start*" which states that "*All new positions will be subject to a probationary period of 6 months….*"

23. The claimant's role was to drive heavy goods vehicles containing the respondent's products. He was based at the Elmsall Way distribution centre, which includes a number of warehouses and a transport office. Drivers are assigned dedicated delivery routes, such as to a particular store or regional service centre, and may also be asked to move vehicles around the warehouse yard to ensure other vehicles can be loaded.

24. Part of the claimant's role was to collect trailers loaded with the respondent's goods and connect them to the cab that he was driving. Drivers are allocated a particular cab to drive, and then have to attach a trailer to that cab. Each trailer is located in a numbered bay outside the warehouse whilst it is being loaded. Once the trailer has been loaded the driver then drives the cab up to the bay, connects the trailer to the cab and drives off.

25. There are a number of steps that must be followed to protect the health and safety of staff, including by ensuring that trailers are not connected to cabs and driven whilst warehouse staff are still loading them. Some of those steps are set out in a policy called the Salvo Safety Process for Drivers. The claimant was informed about the

Salvo Safety Process at the start of his employment and received training in it. It was clear from the claimant's evidence to the Tribunal that the claimant understood and was familiar with that process. `

26. During the course of his employment with the respondent the claimant reported to George Wicks who was his team manager. The claimant raised a number of concerns about issues at work. Each of the concerns that the claimant raised were sent to HR rather than to his manager or local managers. Notwithstanding this, they were looked into by the respondent. The respondent encouraged its drivers to raise concerns, particularly about health and safety issues. The Health & Safety section of the Employee Handbook states that:

"*All employees are under duty to work safely at all times and to place a high priority on the safety of themselves, their colleagues and third parties. Every employee has the right and is obliged to raise safety concerns and issues with their Manager and/or the Health and Safety Department.*"

27. The Handbook also stated that all accidents and safety incidents must be reported immediately, however minor, and that failure to report an accident immediately is a serious disciplinary matter which could result in action up to and including dismissal.

28. On 24 July 2023 the claimant wrote to HR raising concerns about workplace cleanliness, complaining that he had observed a colleague throw a plastic bottle under a fence. HR forwarded the email to Leanne Camplin, Transport Assistant Site Manager, and suggested that she consider putting out communications about disposing of waste in an appropriate manner.

29. On 9 August the claimant wrote to HR raising issues about the Drivers' Portal and holiday bookings. HR forwarded the email to the claimant's line manager and Leanne Camplin and asked them to follow up on the issues raised with the claimant.

30. In early September 2023 the claimant raised concerns about a driver using a handhold mobile whilst driving. He was asked to provide a statement about the incident and the driver was dismissed.

31. On 18 September 2023 the claimant sent an email to HR headed 'Safety' in which he raised concerns that he had been accused of 'hindering someone's job and lacking teamwork skills'. On 3 October the email was forwarded to Leanne Camplin by HR who asked Ms Camplin to look into the issue. Leanne Camplin was aware that this was the not the first time that the claimant had raised issues, and on 3 October 2023 she asked the claimant's line manager, George Wilks, to carry out a probationary review with the claimant urgently "*to understand what is happening and why he is not reporting these issues in the office".*

32. The reason why Leanne Camplin wanted a probationary review meeting to be carried out was because the claimant was raising his concerns online and with the Head Office HR team rather than with the local transport office, and she wanted the claimant to understand that the correct procedure was to raise concerns initially with

the local transport office.

33. Mr Wicks was off work due to ill health and was not able to carry out the probationary review.

34. On 17 October 2023 the claimant attended work. He was directed to drive his cab to a particular bay to attach a trailer to it. There was a dispute of evidence as to who gave this instruction to the claimant. The claimant said it was a 'shunter', the respondent said it should have been a 'DIC' or Docking in Charge operative. Nothing turns on that for the purpose of the issues that we have had to determine. We find that someone did tell the claimant to go to the particular bay but there was insufficient evidence before us to make a finding as to who that individual was.

35. Before driving in to the bay the claimant checked that the light in the bay was green, because drivers are only allowed to drive into a bay when the light is green. If the light is red the driver must not drive into the bay.

36. At the time the claimant drove into the bay the light was green, so the claimant considered himself to be authorised to drive into the bay. Once in the bay the claimant began following the correct Salvo Safety Process to connect the trailer in the bay to his cab.

37. Whilst he was doing this, the light in the bay turned to red. The claimant was concerned that the traffic light safety system was not working or was being deliberately manipulated, and went to the transport office to report it. Whilst there he spoke to Fiona Krebs and told her that someone had switched the light to red and opened the doors on a green light. The claimant reported this incident because he was concerned about a potential risk to the health and safety of people working on the site including those working in the warehouse.

38. Ms Krebs asked the claimant which DIC had asked him to dock at that particular bay. The claimant was not aware at the time that the role of DIC existed and was not familiar with the term DIC. English is not his first language, although he speaks it very well. In response to Ms Krebs' question the claimant replied that 'the green light' had authorised him to drive into the bay because it was his genuine understanding at the time that it was the green light that gave him authorisation to dock in that particular bay, rather than an individual.

39. Ms Krebs formed the view that the claimant was refusing to answer her question He was not. Rather the claimant was answering in the way that he thought appropriate. He didn't know what a DIC was, and believed that it was the green light that gave him authorisation to drive in to the bay and connect the trailer in the bay to his cab. He was not trying to be difficult, but there was a miscommunication issue on both sides which lead to both the claimant and Ms Krebs becoming frustrated with the other.

40. The claimant then left the office and Fiona Krebs went to speak to Leanne Camplin. She told Ms Camplin that the claimant had reported an issue with the safety light system, and that he had refused to provide information to enable Ms Krebs to

investigate the issue. Ms Camplin asked Ms Krebs to carry out a probationary review meeting with the claimant and it was agreed that as George Wicks was off sick, Ms Krebs would do the review.

41. On the morning of 18 October, before starting work, the claimant sent an email to the respondent's HR department. In the email he wrote:

"*This is the final request for a copy of the Salvo Lock Policy signed on 29-09-2023 at around 16.30….*

While approached by one of you Manager and requested to sign an update on the Salvo Lock Policy, I was not provided with its content and did not have a chance to read it. It was explained by the Manager verbally only….

My request follows an accident that occurred on 17-10-23. At 14:39, I received a green light at bay 341 in E3 Yard. I exited the cab and went to remove the key from the Salvo Lock Panel. The green light then reverted to red. I returned the key to the Salvo Panel and reported the incident to the E3 Transport Office…."

42. The claimant then went on to write about what had happened with Fiona Krebs when he reported the incident and complained that she had been hostile and abusive. He also referred to collecting a trailer later on the same day, and to the issue involving the use of a handheld mobile by another driver.

43. Fiona Krebs did not see the email until she was preparing her witness statement for these proceedings and she was not aware of its contents at the time of her interactions with the claimant on 18 October.

44. The email was forwarded to Leanne Camplin at 12.20 on 18 October but she did not read it until later on that day and she did not see it before she took the decision to suspend the claimant.

45. On 18 October the claimant attended work and at the start of the shift he went to the transport office to pick up the keys for the cab that had been assigned to him that day.

46. The claimant alleged that at the start of his shift on 18 October a security officer was present in the transport office and was staring at him. Three of the respondent's witnesses gave evidence that no security officer (known within the respondent's business as a Loss Prevention Officer) was present when the claimant started his shift. Rather, the Loss Prevention Team were only contacted after the claimant had left the transport office, and they attended the office after he had returned and when he was sitting in a meeting room. We accept the respondent's evidence on this issue and find that there was no security officer in the transport office at the start of the claimant's shift.

47. Whilst the claimant was in the transport office Fiona Krebs told him that she wanted to have a meeting with him to carry out a probationary review. The claimant said that he did not want to attend the probationary review meeting because Ms Krebs was not his manager and he believed that probationary review meetings

should only be carried out by his line manager. He refused to attend a meeting with Ms Krebs and left the office abruptly. Ms Krebs described him as 'storming out'.

48. The claimant has a direct and literal style of communication and a tendency to speak over others. He is a tall and well-built man. Ms Krebs perceived the claimant's behaviour on 17 and 18 October 2023 to be aggressive and felt intimidated by him.

49. Ms Krebs was upset and shaken by the claimant's behaviour. Leanne Camplin had overheard the conversation between the claimant and Ms Krebs and asked another of the Team Managers James Griffiths, to go and check on the claimant. Mr Griffiths and Lindsey Servis, another manager, left the office and followed the claimant to the yard where he was in or near the cab that he was due to drive.

50. The reason why Leanne Camplin asked James Griffiths to follow the claimant was because she was concerned about the behaviour that the claimant had demonstrated in the office during his interaction with Fiona Krebs. Team Managers are trained to look out for behaviour by drivers that may indicate that something is wrong, even if the driver does not articulate that something was wrong. Ms Camplin was concerned about the claimant's behaviour and in accordance with normal practice asked James Griffiths to check on him and ask him to return to the office for the probation review meeting.

51. Mr Griffiths and Ms Servis walked out into the yard and approached the cab where the claimant was sitting. As they approached the claimant got out of his cab and walked towards them. Mr Griffiths asked the claimant to return to the transport office for a probationary review meeting. The claimant did not want to do so and said as much.

52. The claimant then went to get into the cab to collect his belongings. The claimant and Mr Griffiths reached for the handle of the door to the cab at the same time, and their hands clashed. The claimant's evidence was that Mr Griffiths assaulted him. The respondent's evidence was that the claimant put his hand on top of Mr Griffiths'. We find that there was a clash of hands, which was not deliberate, as both Mr Griffiths and the claimant reached for the door at the same time.

53. The claimant then opened the door to the cab, climbed inside and retrieved his personal belongings. He locked the cab door and gave the keys to Mr Griffiths. He was then escorted back to the transport office.

54. The claimant's evidence was that he was the victim of an assault. The respondent's evidence was that the claimant was not assaulted, but put his hand on top of Mr Griffiths' hand. Neither Mr Griffiths nor Ms Servis gave evidence to the Tribunal, although we had the benefit of written statements that they prepared shortly after the incident. The CCTV footage before us was not conclusive.

55. We find that there was a difficult interaction between the claimant and Mr Griffiths in the yard, but that the claimant was not deliberately aggressive towards either Mr Griffiths or Ms Servis. We also find that the claimant was not deliberately assaulted, but rather that there was a clash of hands when both Mr Griffiths and the claimant

reached for the door at the same time. This all happened very quickly, and the claimant was not prevented from either getting into or leaving the cab with his belongings.

56. Mr Griffiths perceived the claimant's behaviour to be aggressive. Ms Servis described the claimant as "*very uncomfortable to be around and started just staring at James with a very sinister look on his face and glared at me*". Both formed the view that the claimant may hit Mr Griffiths. The claimant also felt threatened during the interaction and believed that Mr Griffiths had assaulted him.

57. After the interaction all three returned to the transport office and the claimant was asked to wait in a meeting room, which he did. Mr Griffiths and Ms Servis went to see Leanne Camplin and told her their account of what had just happened. Ms Camplin formed the view that the claimant had behaved aggressively and should be suspended.

58. The original intention of the respondent when asking the claimant to return to the transport office for a meeting was that the probationary review meeting should take place. However, in light of the incident in the yard between the claimant, James Griffiths and Lindsay Servis, a decision was taken to suspend the claimant. The purpose of the meeting therefore changed to a suspension meeting. There was no deliberate attempt to deceive or mislead the claimant when he was originally asked to attend a probation review meeting in the transport office, but rather an unforeseen change in circumstances.

59. Lindsay Servis and James Griffiths went into the meeting room where the claimant was sat down waiting. Two Loss Prevention Officers also entered the room. Both were wearing body worn cameras which they turned on to record the meeting. The claimant was not told that the meeting was being recorded and was not asked whether he agreed to the meeting being recorded. He was however aware that the meeting was being recorded because two days later he asked for a copy of the recording as part of a subject access request that he sent to the respondent on 20 October. The respondent has a CCTV policy, but that policy is not contractual.

60. The claimant was not prevented from leaving the meeting and could have done so at any time. At no point during the meeting did he express a wish to leave. The respondent did not say or do anything to prevent him from leaving.

61. At the start of the meeting Ms Servis told the claimant that he was being suspended. He asked why and Ms Servis read from a piece of paper that had been prepared in advance of the meeting. The grounds for suspension that were given to the claimant were 'threatening / intimidating behaviour'. The claimant was not told what he had done that was considered to be threatening or intimidating although it was made clear at the start of the meeting that the meeting was about what had just happened.

62. During the meeting the claimant repeatedly asked questions, spoke over and interrupted Lindsey Servis. He asked for James Griffiths' name, despite clearly knowing Mr Griffiths' name as he referred to it early on in the meeting. The claimant

asked for a copy of the sheets of paper that Lindsey Servis was reading from. He was told that one would be provided later, and was not given a copy during the meeting. The claimant was given time to read the document and allowed to take photographs of it.

63. The claimant told the respondent that he was recording the meeting on his phone. He was asked to stop recording but refused to do so. He repeatedly accused James Griffiths of lying.

64. At the end of the meeting the claimant was escorted out of the room, subjected to a spot search, and then escorted off the premises. His security pass was removed from him. The claimant was suspended on full pay. There was no evidence before the Tribunal that the claimant's suspension was ever confirmed in writing.

65. At approximately 8.53 pm on that evening, 18 October 2023, the claimant sent a further email to HR including a letter titled "Suspension". In the letter he complained about what had happened that day, stated that James Griffiths had assaulted him, described Fiona Krebs' request for him to attend a probation review meeting as "*illegitimate and misleading*" and said that during the meeting Ms Servis had admitted "*that she witnessed me being abused the day before. She also confirmed that they used false statements to lure me into this place.*". None of this was true.

66. On 20 October 2023 the claimant wrote to the respondent submitting a subject access request for camera footage of the incident in the yard on 18th October and of the body worn camera footage of the meeting in the transport office on the same day. On 23 November 2023 the respondent's data protection team sent the claimant a link to the footage he had requested. The claimant accessed this link to view the footage.

67. Roy Clarke, Loss Prevention Manager, was appointed as the investigation manager and asked to carry out an investigation into the events of 18 October. On 23 October he wrote to the claimant inviting him to an investigation meeting the following day. In the letter he wrote "*At the meeting you will be presented with the findings of my investigation and will be given the opportunity to respond*". The claimant wrote to the respondent stating that he had not been provided with any details about the subject of the investigation, that this was not a fair approach, and that he was only willing to attend a meeting if he was allowed to use an audio recording device. HR replied to his email stating that the invitation was for an investigation meeting only, "*Which is an informal meeting to ascertain facts surrounding any potential incident or conduct issue at work, as such it does not come with a subject matter or an allegation at this stage".* HR also informed the claimant that he would not be allowed to record the meeting as it was not part of company policy or a reasonable adjustment.

68. The claimant was also told that he was suspended due to an incident 'as specified on your suspension document'. The claimant had not been provided with a copy of the suspension document at that stage although he had been shown it during the meeting on 18 October and allowed to take photographs of it. After an exchange of emails with HR the claimant wrote that he could not take part in the meeting due to

the respondent's refusal to allow the recording of the meeting. He also referred to "*assault and false imprisonment, all of which were followed by false statements*".

69. An investigation meeting took place on 24 October in the claimant's absence. Present at the meeting were Roy Clarke, Loss Prevention Manager, and Lee Loucas, Deputy HR Manager. Detailed notes were produced of that meeting which lasted approximately two hours, despite the absence of the claimant. A number of questions were asked and the notes recorded repeatedly that "*TD is not present to answer*".

70. At the end of the meeting Roy Clarke concluded that:

"*Though the cctv doesn't provide me with any examples of physical intimidation towards anyone involved, the witness statements all provide evidence that each individual felt that TD presented intimidating behaviour through how he spoke to them and how he acted around them, 2 of the statements indicate that they felt so intimidated that they feared physical violence could occur. It is my belief that the request made to TD to attend a probationary review meeting with an alternative manager, considering his line manager was and has been absent from work, is a reasonable request and that the behaviour exhibited following this request is unreasonable and unacceptable in the workplace.*"

71. Mr Clarke formed the view that, under normal circumstances, he would be forwarding the case to a disciplinary meeting to answer to an allegation of gross misconduct for inappropriate behaviour, namely intimidating behaviour and failure to follow a reasonable request by a manager, but that as the claimant was still within his probationary period, the appropriate action was to invite him to a probation review meeting to discuss the concerns.

72. On 27 October Lee Loucas wrote to the claimant by email informing him that the investigation meeting had gone ahead in his absence and attaching a copy of the notes from the investigation and the evidence that had been considered. He also informed the claimant that the outcome of the investigation was a recommendation that the claimant remain suspended, and that he would be invited to attend a probationary review meeting to discuss his employment.

73. On 31 October Leanne Camplin wrote to the claimant inviting him to a probationary review meeting on 2nd November. Ms Camplin wrote in the letter that she wanted at the meeting to discuss concerns about the claimant's conduct, namely:

"*An allegation of gross misconduct of inappropriate behaviour in the workplace, specifically intimidating behaviour on 18th October 2023.*

Failure to follow a reasonable request by a manager, specifically not attending a probation review meeting on 18th October 2023."

74. The claimant was warned that a result of the meeting could be to end his contract of employment.

75. The claimant sent an email in reply stating that the 2 and 3 November were his days off, and asking that alternative dates be provided. He asked questions about the meeting, to which Stephanie Darling from HR replied. The claimant was not satisfied with the reply and wrote to Ms Darling on 4 November that "*Your statements do not align with the Next Company Policy*". He accused five members of staff of perjury and James Griffiths of physical abuse as well, and suggested that the respondent was protecting criminal activity.

76. The meeting was rearranged for 8 November. The claimant did not attend, and the meeting was again rearranged, this time for 14 November. On 8 November 2023 Stephanie Darling in HR sent to the claimant by email a copy of the suspension form and of the investigation notes.

77. The claimant did not attend the probation review meeting on 14 November and the meeting went ahead in his absence. Notes were taken of the meeting and it was recorded that "*TD was not present to answer*".

78. Following the meeting Leanne Camplin concluded that the case should be taken to a disciplinary hearing in respect of intimidating behaviour on 18th October 2023 and failure to follow a reasonable request by a manager, by not attending a probation review meeting on 18th October 2023.

79. There was also before us in evidence a second set of notes of the meeting on 14 November. Those notes referred to the claimant being dismissed. Ms Camplin's evidence, which we accept, was that the second set of notes were not an accurate reflection of the meeting, and that she did not know why they had been prepared. She believed that HR made that set of notes and that they were not sent to the claimant. In the event, Ms Camplin did not dismiss the claimant during the meeting on 14 November, but instead invited him to a disciplinary hearing. As a result, the claimant remained employed, and suspended on full pay, for a further month.

80. On 6 December 2023 Ms Camplin wrote to the claimant and invited him to a formal disciplinary hearing on 7 December 2023. The allegations to be considered at the disciplinary hearing were described in the invite letter as being:

"*An act of gross misconduct whereby, it is alleged that on 18th October 2023 you have displayed inappropriate behaviour in the workplace, specifically intimidating behaviour.*

An act of misconduct whereby it is alleged you have failed to follow a reasonable request by a manager, specifically not attending a probation review meeting.

81. Included with the letter were fifteen documents including the investigation meeting notes, the witness statements dated 18 October 2023, the suspension form, the Salvo Safety Driver Process and the notes from the probation meeting on 14 November.

82. The letter informed the claimant of his right to be accompanied at the meeting and warned him that if he did not attend a decision could be made in his absence.

He was asked to contact Leanne Camplin if he was unable to attend the disciplinary hearing, and warned that the meeting may result in his dismissal. The claimant responded to the invite in writing raising a number of concerns about the process followed and asking for copies of the suspension form, CCTV footage and the full Salvo Safety Driver Process document. HR replied indicating that he had already been provided with the opportunity to review the CCTV footage during the investigation, and that information about the Salvo process had been provided as part of the investigation pack. HR also sent him a copy of the suspension form.

83. The disciplinary hearing went ahead on 7 December and was chaired by Leanne Camplin. Stephanie Darling from HR also attended and took notes. The claimant did not attend.

84. The notes of the hearing were in evidence before us and record that the meeting lasted approximately 1 hour and 15 minutes. A number of questions were asked and the notes record as answers "*Tomasz was not present to answer"*. At the end of the meeting Ms Camplin decided to dismiss the claimant without notice. On 13th December she wrote to him informing him of her decision. In the letter she wrote:

"*As outlined in your suspension form, which you refused to sign, "You must be available to attend the required hearings at the request of the Company. If you fail to attend a hearing without reasonable cause or satisfactory explanation the hearing may be held in your absence." Unfortunately you failed to attend the meeting, despite the terms of suspension, therefore, I proceeded with the meeting in your absence, as outlined in your invitation letter….*

The statements I have read make me believe that your behaviour on several occasions is unacceptable and could be perceived as threatening towards other colleagues. The CCTV evidence does also substantiate these behaviours. As you were not present I was unable to discuss this with you….

I appreciate that there are some issues that you have raised in your email and had you been present at the meeting, could have been further clarified or further investigated by the meeting went ahead in your absence, based on the information that I had been provided with.

To summarise, based on the information that I have been provided with and the evidence I have seen, my decision is that both of the allegations are founded. I find your conduct, specifically behaviour to be unacceptable and not something that Next will tolerate as a business and amounts to an act of gross misconduct. Furthermore it is my belief that you failed to follow a reasonable request made by a Manager of the business, to attend a probationary review meeting, an act of misconduct. On this basis I have made the decision to dismiss you on the grounds of gross misconduct with immediate effect."

85. There is no mention in any of the documents leading up to the claimant's dismissal, or in the dismissal letter itself, of the matters reported by the claimant on 17 and 18 October 2023. Rather, the focus was on the claimant's behaviour on 18th October which the respondent perceived to be unacceptable.

86. The claimant alleged that the respondent refused to provide him with a copy of the evidence that it intended to rely on during the disciplinary hearing, and that it refused to provide him with witness statements dated 18 October 2023 and with CCTV footage.

87. The evidence that was to be relied upon at the disciplinary hearing, including the witness statements of 18 October, and the CCTV footage were, however, sent to the claimant.

88. The letter of dismissal referred to the claimant's last day of employment being 7 December 2023. The respondent admitted however during the course of the hearing that the effective date of termination of the claimant's employment was 13 December, namely the date upon which he was notified of his dismissal.

89. The claimant was not given any period of notice of termination of his employment, and was not paid in lieu of notice. His employment terminated on 13 December 2023.

90. The claimant appealed against the decision to dismiss him, on the grounds that:

1. He had not received a copy of all of the evidence he had requested;
2. Roy Clarke had concluded that the CCTV material did not show any physical intimidation;
3. The suspension meeting was recorded without his consent and without him being informed of the recording;
4. He had answered all of the questions asked during the disciplinary meeting in writing; and
5. There was no evidence to justify a dismissal without notice.

91. An appeal hearing was arranged for 22 December 2023, chaired by Paula Turner, National Fleet, Compliance & Driver Training Manager. Michelle Green from HR was also present and took notes.

92. The claimant attended this meeting and, at the start, told the respondent that he was recording the meeting. Michelle Green said that he could take his own notes and offered him a pen and paper. She also told him that she would be taking notes and that he would be sent a copy of those notes. Paula Turner told the claimant that he was not allowed to record the meeting.

93. The claimant said that it was "*my human rights and British legislation*" to record the meeting and that the respondent was also recording it. Ms Turner told the claimant to stop recording and that if the claimant did not stop the recording they would proceed in his absence.

94. The claimant refused to stop recording and was asked to leave the meeting, which he did. The meeting then continued in his absence, with Paula Turner asking a number of questions to which, unsurprisingly, she got no reply. Instead, the notes

record repeatedly "*Tomasz was not present to answer".*

95. After the appeal hearing Paula Turner wrote to the claimant informing him of her decision. She did not uphold his appeal.

96. On 21 November 2023 the claimant wrote to the respondent raising a query about his payslips, and suggesting that he had been underpaid. The respondent looked into this and discovered that the claimant had not completed his time sheets correctly. He was asked to re-submit his time sheets for the relevant dates, with the correct information, which he did.

97. The respondent reviewed the revised time sheets and concluded that the claimant was entitled to an additional payment of £419.12 for hours worked, plus a premium adjustment of £54.78.

98. By the time the claimant raised his query about pay, the cutoff date for the November payroll had passed. The respondent arranged for the premium adjustment of £54.78 to be paid in the December payroll, and it is recorded on the claimant's payslip for that date as "Premium Adjustment".

99. To ensure that the claimant was not left short until the December payroll, the respondent paid him £332 on 29 November 2023. This sum was paid outside of the normal payroll procedure, by direct bank transfer as an advance of salary. This was in line with the respondent's normal policy which is to make a bank transfer of the estimated net value of the sum owed to the employee. The respondent calculated that after the deduction of tax and NIC £419.12 (a gross figure) would equate to a net payment of £332. That sum was paid to the claimant on 29 November as an advance of salary.

100. The sum of £419.12 was included in the claimant's pay for December 2023 and recorded as a "Timecard Adjust", so that tax and national insurance contributions could be applied to it. To avoid double payment however, the sum of £322 that had been paid to the claimant on 29 November was deducted from the payment made to the claimant that month, and recorded on the claimant's payslip as "Advance".

The Law

Protected disclosures

101. The relevant statutory provisions are sections 43A, 43B and 43C of the Employment Rights Act 1996 which provide as follows:

"***43A Meaning of "protected disclosure"***

In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H

43B Disclosures qualifying for protection

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following –

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

(2) In this part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

43C Disclosure to employer or other responsible person

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –

(2) (a) to his employer…"

102. In ***Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325***, the EAT held that the ordinary meaning of giving information is 'conveying facts', which is distinct from the mere making of an allegation. The Court of Appeal has however subsequently held that 'information' can potentially include statements which might also be categorised as allegations (***Kilraine v London Borough of Wandsworth [2018] ICR 1850***). The statement must however have sufficient factual content that it tends to show one of the matters listed in section 43B(a) to (f).

103. A disclosure does not have to be in writing to fall within section 43B of the ERA. Oral communications which convey facts and which meet the other requirements of the section may be covered (***Eiger Securities LLP v Korshunova [2017] ICR 561***).

104. In order for a disclosure to be a qualifying disclosure, the employee must reasonably believe that it tends to show one of the relevant matters. He must also reasonably believe that the disclosure is in the public interest.

105. The test for 'reasonable belief' is both objective and subjective. The Tribunal must focus on what the claimant believed (rather than what a hypothetical reasonable worker may believe) but there must also be some objective basis for the claimant's belief (***Korashi v Abertawe Bro Morgannwy University Local Health Board***

[2012] IRLR 4). In ***Phoenix House Ltd v Stockman [2017] ICR 84***, the EAT, endorsing the approach taken in ***Korashi***, held that, on the facts that the claimant believed to exist, a judgment must be made firstly as to whether the belief was reasonable and secondly whether looking at matters objectively, there was a reasonable belief that the facts tend to show one of the relevant matters.

106. The leading case when considering the question of public interest is ***Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) [2018] ICR 731***. In that case the Court of Appeal held that when considering whether a disclosure is in the public interest, factors that may be relevant include:

1. The number of people whose interests the disclosure served;
2. The nature of the interests affected and the extent to which they are affected by the wrongdoing that is being disclosed;
3. The nature of the wrongdoing disclosed; and
4. The identity of the alleged wrongdoer.

Automatic Unfair dismissal

107. Section 103A of the ERA provides that "*An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.*

108. In a complaint under section 103A of the ERA an employee does not need to have two years' continuous employment. Where an employee does not have two years' service however, the burden of proving, on the balance of probabilities, that the reason for dismissal was an automatically unfair one lies with the employee (***Smith v Hayle Town Council 1978 ICR 996***).

109. In an automatically unfair dismissal claim under section 103A the claimant will succeed if the Tribunal is satisfied that the reason or the principal reason for the dismissal is the protected disclosure. When deciding this issue the Tribunal must consider the reason that operated on the employer's mind at the time of the dismissal. This was summarised by the Court of Appeal in ***Abernethy v Mott, Hay and Anderson [1974] ICR 323*** as being "*the set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee"*.

110. This approach was also approved by Lord Justice Underhill in ***Croydon Health Services NHS Trust v Beatt [2017] ICR 1240***, when he held that the reason for a dismissal is 'the factor or factors operating on the mind of the decision-maker which cause him to dismiss the employee'.

111. In the case of ***Fecitt and ors v NHS Manchester (Public Concern at Work intervening) [2012] ICR 372***, Lord Justice Elias confirmed that the causation test

for unfair dismissal is stricter than that for unlawful detriment under section 47B of the ERA. In an unlawful detriment claim the protected disclosure just has to be one of many reasons for the detriment, in an unfair dismissal claim the disclosure must be the primary motivation for the dismissal.

112. There are therefore different causation tests that apply in detriment and dismissal claims, and the 'material influence' test that applies in detriment claims does not apply to claims under section 103A of the ERA.

113. When deciding the reason for dismissal in a claim under section 103A of the ERA, the Tribunal must consider both the conscious and the unconscious reasons for the dismissal.

114. The Tribunal can draw inferences as to the real reason for dismissal. In ***Kuzel v Roche Products Ltd [2008] ICR 799***, the Court of Appeal confirmed that, when considering the reason for the claimant's dismissal, a Tribunal can draw 'reasonable inferences from primary facts established by the evidence or not contested in the evidence'. The Tribunal is not however under any obligation to draw an inference.

115. When considering whether an employee has been dismissed for making protected disclosures, questions of reasonableness do not arise.

Whistleblowing Detriment

116. Section 47B of the ERA contains the right not to be subject to whistleblowing detriment, the relevant provisions being the following:

"(1) *A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.*

117. Section 48 (1A) of the ERA gives workers the right to make a complaint to an Employment Tribunal that they have been subjected to a detriment contrary to section 47A. Section 48(2) provides that in a detriment claim under section 47A"*it is for the employer to show the ground on which any act, or deliberate failure to act, was done.*" As a result of this provision if the claimant establishes on the balance of probabilities that there was a protected disclosure and a detriment, the burden of proof passes to the employer to show that the claimant was not subjected to the detriment on the ground that he made the protected disclosure. It does not however mean that a detriment claim will succeed 'by default' if there is no evidence as to why the respondent subjected the claimant to the detriment (***Ibekwe v Sussex Partnership NHS Foundation Trust EAT 0072/14***).

118. The question for the Tribunal is what, consciously or unconsciously, was the reason for the detrimental treatment. In order for the claim to succeed the protected disclosures must be the 'real reason' or the 'core reason' for the treatment (***Aspinall v MSI Mech Forge Ltd EAT 891/01***). In ***Fecitt and others v NHS Manchester (Public Concern at Work intervening) [2010] ICR 372*** Elias LJ

summarised the causation test in whistleblowing detriment claims as being 'did the protected disclosure materially (in the sense of more than trivially) influence the respondent's treatment of the claimant.

119. In ***London Borough of Harrow v Knight [2003] IRLR 140*** the EAT held that in order for a claim for detriment to be successful, the following elements must be present:

1. The claimant must have made a protected disclosure;
2. He must have suffered an identifiable detriment;
3. The employer, worker or agent must have subjected the claimant to that detriment by some act or deliberate failure to act; and
4. The act or deliberate failure to act must have been done on the ground that the claimant made the protected disclosure.

120. The Tribunal can draw an inference in detriment claims. In ***International Petroleum Ltd and others v Osipov and others EAT 0058/17*** the EAT held that the correct approach when drawing inferences in a detriment claim is as follows:

1. It is for the claimant to show that the protected disclosure is a ground or reason (that is more than trivial) for the detriment;
2. The respondent must be prepared to show why the detrimental treatment was carried out. If it does not do so, inferences may be drawn against it;
3. Any inferences drawn must be justified by the Tribunal's findings of fact.

<u>Wrongful dismissal / breach of contract</u>

121. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 gives Tribunals the power to hear claims for breach of a contract of employment or other contract connected with employment where the claim arises or is outstanding on the termination of the claimant's employment.

122. Article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 provides that:

> "*Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if –*
>
> *(a) The claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*
> *(b) The claim is not one to which article 5 applies; and*
> *(c) The claim arises or is outstanding on the termination of the employee's employment.*

123. In a wrongful dismissal case questions of reasonableness do not arise, and the issue is whether the employee was guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract (***Enable Care and Home Support Ltd v Pearson EAT 0366/09***).

124. In ***Laws v London Chronicle (Indicator Newspapers) Ltd [1959] 1 WLR 698*** the Court of Appeal suggested that the conduct of the employee must disclose a deliberate intention to disregard the essential requirements of the contract. In ***Briscoe v Lubrizol Ltd [2002] IRLR 607*** the court of Appeal held that the conduct must so undermine trust and confidence that the employer is no longer required to keep the employee in employment, and that the employee's conduct should be viewed objectively, such that an employee could repudiate his contract without intending to do so.

Unauthorised deductions from wages

125. Section 13 of the Employment Rights Act 1996 states that:

> "*(1) An employer shall not make a deduction from wages of a worker employed by him unless –*
>
> *(a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
>
> *(b) The worker has previously signified in writing his agreement or consent to the making of the deduction…*
>
> *(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."*

Conclusions

126. The following conclusions are reached on a unanimous basis, having considered carefully the evidence before us, the relevant legal principles and the submissions of the parties.

Protected disclosures

127. The claimant asserts that he made two protected disclosures, the first being a verbal disclosure on 17 October and the second an email sent on 18 October.

128. On 17 October the claimant told Fiona Krebs that someone had switched a safety light from green to red, and also that doors had been opened when the light was on green, when they should only have been opened when the light was red. During the conversation the claimant conveyed facts to Ms Krebs about the incident that had

just occurred. We find that during this conversation the claimant did disclose information to Ms Krebs.

129. We accept the claimant's evidence that at the time he made the disclosure to Ms Krebs, he believed that there was a risk to the health and safety of those working in the yard and in the warehouse, as the green and red light system appeared either not to be working or was being deliberately manipulated or tampered with. The red and green light system was designed to protect the health and safety of those working in the yard and the warehouse by ensuring that trailers were not attached to cabs when they were still being loaded by warehouse staff.

130. We therefore find that on 17 March the claimant disclosed information to the respondent about an incident which he believed caused a potential risk to the health and safety of the respondent's workers, and that the information disclosed tended to show that the health and safety of those working in the warehouse and in the yard had been or was being endangered.

131. We also find that it was reasonable for the claimant to believe this. The green and red light system was a health and safety measure and the respondent did not seek to argue to the contrary. The claimant had evidence that caused him to believe that the health and safety measure was not working. It was therefore reasonable for him to believe that there was a risk to the health and safety of the respondent's workers. The respondent is a safety conscious business in which emphasis is placed on health and safety and drivers are encouraged to report any health and safety issues that may arise.

132. We find that the reason why the claimant made the disclosure was a genuine concern that health and safety rules were not being adhered to. It is clear from the number of concerns raised by the claimant during the course of his employment, that compliance with rules and procedures was very important to him, and that he would not hesitate to raise any concerns that he had.

133. We have then gone on to consider whether the claimant believed that the disclosure of information was in the public interest. We accept the claimant's evidence that he believed the information he was disclosing was in the public interest because it was in the interest of staff working on site, in particular those working in the yard and in the warehouse. There was limited evidence before us about the number of people working on site at the time but it is not necessary, in our view, to identify the precise number of people who may be affected by the risk to health and safety. The disclosure was not made in the claimant's personal interest.

134. We find, on balance, that the claimant's belief that the disclosure was in the public interest was a reasonable one. The disclosure was made to the claimant's employer.

135. For these reasons we find that the disclosure on 17th October was a protected disclosure.

136. On 18th October the claimant sent an email in which he raised a number of issues,

one of which was the incident that had occurred the previous day. He referred to the incident as an 'accident'.

137. In the email the claimant also raised some issues in his own personal interest, such as the way in which he said Fiona Krebs had spoken to him the previous day, and requests for copies of policies. The fact that some of the content of the email raised issues in the claimant's personal interest does not in itself prevent the disclosure also being in the public interest.

138. It is clear that the focus of the email is the incident on 17 October involving the change in colour of the lights. We find that the claimant disclosed information about that incident in the email. We accept his evidence that he believed the disclosures he made on both days were disclosing information about a risk to health and safety, and that the disclosures were made in the public interest, namely the interest of those working on site.

139. We therefore find that the claimant did make protected disclosures on both the 17th and 18th October 2023.

Automatic unfair dismissal

140. The key question in the complaint of automatic unfair dismissal is whether the protected disclosures on 17 and 18 October were the reason or, if more than one, the principal reason for the dismissal. The burden of establishing this, on the balance of probabilities, lies with the claimant.

141. We have considered carefully the evidence given by Ms Camplin, who took the decision to dismiss the claimant, together with the contemporaneous documentary evidence.

142. The letter of dismissal states that the claimant was dismissed because Ms Camplin considered the claimant's conduct to be unacceptable and to amount to an act of gross misconduct. The conduct is question was the claimant's behaviour on the 18 October 2023, which the respondent considered to be inappropriate and intimidating. Ms Camplin also found that the claimant was guilty of misconduct by refusing to attend a probation review meeting.

143. We accept Ms Camplin's evidence as to the reason why she dismissed the claimant, which was supported by the documentary evidence before us. We find that the claimant's behaviour on 18 October was inappropriate and we accept that his colleagues felt intimidated by it. It was not unreasonable for the respondent to ask the claimant to attend a probationary review meeting, and it was unreasonable of the claimant to refuse to attend.

144. The disclosures made by the claimant on 17 and 18 October were not the reason or principal reason for the dismissal. We note, in reaching this conclusion, that this employer encouraged people to raise health and safety issues, and that the claimant had raised issues on a number of occasions previously without any adverse consequences. The Company Handbook not only encourages staff to report health

and safety concerns but warns employees that they may be disciplined if they do not do so. There was no evidence before us to suggest that Leanne Camplin was in any way motivated by a desire to 'punish' the claimant for raising health and safety concerns. For example, she could have dismissed him at the probationary review meeting but chose not to, and to invite him to a disciplinary hearing instead. The consequence of this was that the claimant's employment was extended and the claimant had a further opportunity (which unfortunately he did not take) to put forward his version of events.

145. Unfortunately by the time of the dismissal the relationship had broken down. The claimant was refusing, for what he considered to be good reasons but which, viewed objectively, were not good reasons, to participate in the disciplinary process, and had clearly lost trust in his employer. We accept that the reason why Leanne Camplin dismissed the claimant were the reasons set out in the letter of dismissal.

146. The claim for automatic unfair dismissal therefore fails and is dismissed.

Detriment

147. There are seven allegations of detriment before the Tribunal. The first question we have considered is whether the alleged conduct, which the claimant says amounts to a detriment, happened or not.

148. The first allegation is that a security officer was present in the transport office at the start of the claimant's shift on 18th October and stared at the claimant. We find that this did not happen. There was no security officer present in the transport office at the start of the claimant's shift. We prefer the respondent's evidence on this issue.

149. The second allegation is that the claimant was given keys and assigned a job o 18th, and that Fiona Krebs asked him to attend what he described as an 'outdated review six weeks into employment'.

150. We find that the claimant was given keys and assigned a job on the morning of 18th October, and that Fiona Krebs did ask him to attend a probation review meeting. The request was made significantly more than six weeks into the claimant's probationary period but was still within the probationary period. It was, in our view, entirely appropriate for Ms Krebs to invite the claimant to a probationary review meeting because the claimant's manager was off sick and unable to conduct the meeting himself.

151. We accept, on balance, that asking the claimant to attend a probationary review on 18 October did amount to a detriment. It is clear that the claimant attended work expecting and wanting to drive, and that the request to attend a probationary review was unwanted. Whilst the request was a reasonable one we find, on balance, that it did amount to a detriment.

152. The third allegation is that James Griffiths and Lynsey Servis followed the claimant to the unit. We find that they did indeed follow the claimant to the cab in the yard. We also find, on balance, that this amounted to a detriment. It was behaviour

that, whilst reasonable, was clearly unwanted by the claimant and resulted in him not being allowed to perform his duties that day.

153. For the reasons set out in our findings of fact, however, we find that James Griffiths did not assault the claimant by grabbing his hand, but rather that there was an unintentional clashing of hands between Mr Griffiths and the claimant when they both reached for the door handle of the cab at the same time.

154. We also find that James Griffiths did not prevent the claimant from taking his personal belongings from the cab. The CCTV footage clearly shows the claimant being allowed to get into the cab and remove his belongings from it.

155. The sixth allegation of whistleblowing detriment is that the claimant was deceived and falsely imprisoned. We find that the reason for the meeting in the transport office did change, and that this because of the incident in the yard which caused Leanne Camplin to decide to suspend the claimant. The reason why the claimant was originally asked to return to the office was to attend a probationary review meeting. However, following the incident in the yard both James Griffiths and Lynsey Servis reported feeling concerned that the claimant may hit Mr Griffiths, and Ms Camplin decided to suspend the claimant. There was therefore a change in circumstances as a result of the altercation in the yard which resulted in the purpose of the meeting being changed.

156. There was no intent to deceive the claimant on the part of the respondent, rather the respondent was responding to a changing situation and the reason for the meeting changed. We therefore find that the respondent did not deceive the claimant.

157. We also find that the claimant was not imprisoned at any point. Whilst he may have found it intimidating to be in a meeting room with four members of staff, including two Loss Prevention Officers who were recording the meeting on their body worn cameras, he did not ask to leave at any point, nor was he prevented from doing so. The Loss Prevention Officers were asked to attend the meeting because colleagues of the claimant had felt threatened and intimidated by his behaviour.

158. We therefore conclude that the respondent neither deceived nor falsely imprisoned the claimant.

159. The final allegation of whistleblowing detriment is that the respondent suspended the claimant without informing him of the allegations against him. The claimant was suspended on the 18th October. He was told that the reason for his suspension was threatening / intimidating behaviour related to ‘what had just happened’ but was not provided with any more detail than that, despite asking for it. We find that the claimant was informed in most general terms of the reason for his suspension, but was not given the detail about the reason for suspension that he asked for. We also find, on balance, that this amounted to a detriment. It is clear from the video footage of the meeting that the claimant was very concerned that he was not being provided with more detail about the reason for suspension, as he repeatedly asked for more detail without any being provided.

160. We have then gone on to consider whether the conduct which we have found did occur happened on the ground that the claimant made protected disclosures. In considering this question we have asked ourselves what the conscious or unconscious reasons for the treatment were.

161. We find that the reason why the claimant was initially given keys and assigned a job on the morning of 18 October was that he turned up for work in the normal way. This in itself did not amount to a detriment and, in any event, was not because of the protected disclosures – rather it was because it was part of the claimant's normal duties.

162. The reason why Fiona Krebs asked him to attend a probationary review meeting was because the claimant had repeatedly been raising concerns in the wrong way. The decision to conduct a probationary review with the claimant was taken on 3 October 2023, two weeks before the claimant made his protected disclosures. The decision to ask the claimant to attend a probationary review meeting was not linked in any way to the claimant's protected disclosures.

163. The reason why James Griffiths and Lynsey Servis followed the claimant to his cab on the morning of 18 October was that they had been asked to do so by Leanne Camplin who was concerned about the claimant's behaviour and did not want him to drive in a situation where she believed he could be a risk to his or other people's health and safety. We accept the respondent's evidence that its Team Managers are trained to look out for behaviour in drivers that could indicate that something was wrong, and that it was because of concerns about the claimant's behaviour that James Griffiths and Lynsey Servis followed him to his cab. The claimant's protected disclosures had nothing to do with the actions of Ms Camplin, Mr Griffiths and Ms Servis that day.

164. The reason why the claimant was not provided with further information about the reason for his suspension was that the suspension was right at the start of the investigation, and Lynsey Servis believed that the claimant was not entitled to be provided with more information at that stage. The respondent considered that the investigation needed to take place before the allegations could be specified in more detail. The claimant was provided with some general information and it was also made clear to him that the suspension related to what had just happened in the yard. The failure to provide more details about the reason for suspension had nothing to do with the protected disclosures.

165. For these reasons we find that the claim for detriment under section 48 of the Employment Rights Act 1996 is not well founded. It fails and is dismissed.

<u>Breach of contract</u>

166. The claimant makes five allegations of breach of contract, all of which relate to the conduct of the internal disciplinary process prior to his dismissal. We accept that these claims were outstanding when the claimant's employment terminated.

167. The first allegation of breach of contract is that the respondent recorded a meeting

on 18 October 2023 without informing the claimant or gaining his consent. We find that the respondent did record the meeting on 18th October without explicitly informing the claimant or getting his consent. However, it is clear from the subject access request that the claimant submitted just two days later on 20 October that the claimant knew the meeting was being recorded on the body worn cameras of the Loss Prevention Officers. Moreover, the claimant himself was recording the meeting on his mobile telephone, without informing the respondent that he was doing so.

168. Whilst we find that it would have been good practice for the respondent to tell the claimant that the meeting was being recorded, it was not a breach of contract for the respondent not to do so. We accept the respondent's submissions that the CCTV policy was not contractual.

169. The second alleged breach of contract is that the respondent refused to provide the claimant with a copy of the evidence it intended to rely on at the disciplinary hearing. That allegation is not made out on the evidence before us. Mr Loucas sent some evidence to the claimant on 27 October, and Ms Camplin sent further evidence to the claimant with her letter of 6 December 2023 inviting him to a disciplinary hearing.

170. We find that the respondent did not refuse to provide the claimant with a copy of the evidence it intended to rely on during the disciplinary hearing. The evidence was sent to the claimant in advance of the disciplinary hearing.

171. The third alleged breach of contract was that the respondent refused to provide the claimant with witness statements. The witness statements were sent to the claimant by Ms Camplin on 6 December. The respondent did not refuse to provide them to the claimant.

172. The fourth alleged breach of contract was that the respondent failed to provide the claimant with the CCTV footage. We find that the respondent did in fact provide the claimant with access to the footage. On 23 November 2023 the respondent's data protection team sent the claimant a link to the footage, which the claimant used to view the footage. The respondent did not, therefore, fail to provide the claimant with the CCTV footage.

173. The final allegation, that the respondent failed to provide evidence proving gross misconduct, may be relevant to the claim for wrongful dismissal but is not in itself a breach of a contractual term. In any event we find that the respondent did provide the claimant will all of the evidence that it relied upon when taking its decision to dismiss him.

174. For the above reasons the claim for breach of contract is not well founded. It fails and is dismissed.

<u>Unauthorised deductions from wages</u>

175. The claim for unauthorised deductions from wages relates to the sum of £332 that was deducted from the claimant's wages in December 2023. The reason for the

deduction was that the sum of £332, to which the claimant was entitled, had already been paid to him in November 2023. The claimant was not entitled to be paid the sum of £332 twice. The deduction in December was therefore made to recover an advance payment of wages to the claimant that had been made on 29 November 2023. The deduction was made to avoid the claimant being paid twice in respect of the same hours.

176. The claimant has received all of the sums that he was entitled to be paid. The claim for unauthorised deduction from wages is not well founded. It fails and is dismissed.

Wrongful dismissal / Notice pay

177. The parties agreed that the claimant's notice period was one week, that he was not paid for that week, and that a week's pay was £672 gross.

178. The question we have had to decide therefore is whether the claimant was guilty of gross misconduct or did something so serious that the respondent was entitled to dismiss him without notice. In considering this question we have asked ourselves whether it can be said, objectively speaking, that the claimant's conduct amounted to an intention to disregard the essential requirements of the contract, even if the claimant did not do so deliberately.

179. We have no hesitation in finding that the claimant's conduct on the 18th October did amount to misconduct. He refused to attend a probationary meeting with a manager and behaved in a way that caused colleagues to feel threatened and intimidated. We find on balance however that the claimant's behaviour on 18th October, both in leaving the office and refusing to attend the probationary review meeting, and in the yard, amounted to misconduct but not to gross misconduct.

180. The Tribunal's conclusions, having viewed the CCTV footage of the yard several times, were in line with those reached by Roy Clarke, Loss Prevention Manager, who concluded that the CCTV did not provide examples of physical intimidation by the claimant. There was no evidence before us of any violence or aggression by the claimant, but rather of difficult and obstructive behaviour when the claimant was in a situation which he clearly found uncomfortable.

181. The claimant had a fixation with rules and when be perceived that the respondent was not following the rules, he refused to co-operate. For example, he refused to attend a probationary review meeting with another manager when his manager was off sick – which was a reasonable request for the respondent to make.

182. When Ms Krebs gave evidence to the Tribunal the claimant asserted that the person giving evidence was not the real Ms Krebs, because she looked different in the Tribunal to the person he had spoken to on 17 October. Ms Krebs gave evidence under oath as to her identity, and also produced a copy of her driving licence. Despite this clear evidence of identity the claimant refused to accept that Ms Krebs was the person she said she was. This behaviour was consistent with the behaviour of the claimant during his employment with the respondent, namely that when the claimant

formed a view of something, he was unwilling or unable to move from that view, despite evidence to the contrary.

183. We have considered whether the conduct of the claimant disclosed a deliberate intention to disregard the essential requirements of the contract and/or whether it amounted to a fundamental breach of an express or implied term. We find, on balance, that it did not.

184. The claim for notice pay therefore succeeds. The respondent is ordered to pay the sum of £672 to the claimant, less such deductions as may be required for tax and national insurance.

Employment Judge Ayre
Date: 2 May 2025

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