



EMPLOYMENT TRIBUNALS

Claimant: Mr Carl Hughes

Respondent: Oversolve Ltd

**Record of a Hearing by CVP
at the Employment Tribunal
Audio recorded by CVP**

Heard at: Nottingham

Heard on: 10, 11, 12, 13 and 14, 17 & 18 March 2025

In chambers: 18 March 2025

Before: Employment Judge M Butler

Members: Miss D Newton
Mr C Bhogaita

Appearances:

Claimant: In person

Respondents: Mr D Bunting, Counsel

RESERVED JUDGMENT

1. The unanimous Judgment of the Tribunal is that the claims of unfair dismissal, failure to make reasonable adjustments and victimisation are not well founded and are dismissed.
2. The claims for unauthorised deductions from wages and for commission payments are not well founded and are dismissed.

RESERVED REASONS

Background

1. The Claimant was employed by the Respondent as a Sales Executive from July 2004 to 17 March 2023 when he was dismissed by reason of a breakdown in trust and confidence which for the purposes of the unfair dismissal is said to be “Some other substantial reason justifying the dismissal of the employee”. The Respondent is a manufacturer of carrier bags and its Sales Team is employed on a basic wage plus commission on sales.
2. The Claimant submitted his claim form to the Tribunal on 25 June 2023 in which he claimed unfair dismissal, disability discrimination, arrears of pay and other payments. During the course of two preliminary hearings for case management purposes, the claims were particularised as unfair dismissal, a failure to make reasonable adjustments and victimisation. The Claimant suffered a brain aneurism in 2015 which affected his sight and suffers from stress, anxiety and depression. As recorded in the Preliminary Hearing before Employment Judge Ahmed, disability is conceded by the Respondent in respect of these disabilities.
3. At the 2nd Preliminary Hearing for case management purposes, Employment Judge Adkinson identified that the Claimant may also be bringing a claim for unauthorised deduction from wages and for unpaid commission on sales although the Judge indicated that it would appear these claims are out of time.
4. The Respondent denies all of the claims.

The Issues

5. The issues in this case, apart from the potential claims for unauthorised deductions from wages and unpaid commission, were agreed at the Preliminary Hearing before Employment Judge Adkinson and are set out below in Appendix 1.

The Evidence

6. We heard oral evidence from the Claimant and for the Respondent from Mr Andrew Hopkins, whose accountancy firm acts on behalf of the Respondent, Ms Katie Woodhouse, the Respondent's external HR Business Partner, Ms Jacqueline Swift of Swift HR and Legal Limited, Independent Investigating Officer, Ms Vanessa Grimshaw, of New Dawn Resources Limited, an external HR Business Partner who acted as the Disciplinary Appeal Officer, Ms Kelly Trickett of HR Lincs Limited the Dismissing Officer, Mrs Sarah Brinkler, Finance Director and Mr Ian Brinkler, Director.
7. There was also a bundle of documents comprising 707 pages. We must say that this bundle was poorly put together. The Tribunal Clerk had to re-punch holes in the

pages, documents did not appear to be in chronological order and at pages 484 and 485 there appeared a totally incomplete and out of place index and a rather vague chronology. These issues made it extremely difficult to navigate around the bundle.

Reasonable Adjustments

8. The Claimant faced considerable difficulties in participating in the hearing. He did not have the technology available to him to be able to properly review documents before the Tribunal. At the beginning of the hearing, the Employment Judge set out the procedure which would be followed and, in particular, explained the purpose of submissions and the desirability of the Claimant taking the opportunity to point out those matters in the evidence which supported his claims.
9. Further reasonable adjustments were made for the Claimant in giving him fairly lengthy breaks in the proceedings to enable him to review witness statements and to prepare his submissions. Unfortunately, especially in relation to the Respondent's witness statements, despite giving him extra time, the Claimant did not read them in any detail, nor some of them at all, and this resulted in his cross-examination of some of those witnesses being limited to very few actual questions.

The Facts

10. As agreed by the parties at the Preliminary Hearing before Employment Judge Adkinson on 5 February 2024, the Claimant claims unfair dismissal, victimisation, failure to make reasonable adjustments and unauthorised deductions from wages. The Tribunal's findings of fact relate to these claims and the issues arising from them. There were many side issues in this case involving allegations and counter-allegations which were, frankly, not relevant to the issues before us. Such matters are not recorded in this Judgment.
11. In relation to the issues before us, we find the following facts on the balance of probabilities.
 - 11.1. The Respondent is a carrier bag manufacturer and supplier based in Nottingham.
 - 11.2. The Claimant commenced employment with the Respondent in 2004 as a sales executive initially working from his home in Manchester. In around 2005, he relocated to Nottingham in order to work from the Respondent's offices. The terms of his employment included that he be paid a salary and commission on sales.
 - 11.3. In 2015 the Claimant had a brain aneurism. During his surgery he suffered a stroke. He made a very good recovery and returned to work approximately 2 months after surgery working full time from the Respondent's offices. His Consultant's letter to the Claimant's GP dated 29 November 2017 noted that

he displayed subtle changes in information processing and emotional wellbeing and some loss of peripheral vision. The letter also noted that the Claimant suffered from increased tearfulness and irritability and was prone to lower spirits and struggling with motivation (page 206). These issues also meant he could no longer drive.

- 11.4. Many of the issues in this case stem from how commission payments to the Claimant were calculated. Mrs Brinkler's evidence contradicted the documentary evidence in the bundle as did the Claimant's evidence. Ms Swift in the grievance appeal report (page 395) records the lack of clarity in respect of the commission structure. She concluded that on repeat orders from a previous customer with very little to no action required to process a further order, the commission payment would go to the salesperson who initially introduced that customer. If a repeat order from an existing customer required further work from a different salesperson, the commission would be paid to that salesperson. We accept Ms Swift's assessment of how commission was calculated.
- 11.5. Just before lockdown due to Covid in 2020, the Claimant was told he needed to shield due to his asthma. He followed this medical advice. Shortly thereafter, furlough was introduced. The Claimant continued dealing with customers and was provided with a desktop computer by the Respondent which he could not cope with due to his living arrangements and the distance between his router and the table on which the computer was placed. He was subsequently provided with a laptop to enable him to receive emails and was put on the flexi-furlough scheme when Mrs Brinkler realised he was doing some work from home and for which she agreed to pay him for 1 hour each working day.
- 11.6. During lockdown, the Respondent shut down its operation completely and orders were not received or processed until May 2020 when they re-opened their offices and factory with a skeleton staff. Attendance of staff gradually increased as permitted by Government Guidance but the Claimant remained working from home.
- 11.7. The Claimant continued to receive emails but chose to read them on his mobile phone more often than on the laptop.
- 11.8. The Respondent operated a system based on Clarity Software. The Claimant had access to this system when working from the Respondent's offices and could monitor all orders coming in to the Respondent and, in relation to his own orders, could calculate the gross and net profit in order to calculate the commission due to him. He asked for remote access to Clarity whilst working from home which was denied by the Respondent for two reasons. Firstly, the remote access system called Clarity Go, which had not been supplied to anyone previously, would require a major upgrade to the servers at a cost of

approximately £20,000 and, secondly, if implemented, it would give access to confidential financial information which the Respondent would not wish to share with employees.

- 11.9. The Claimant began to suspect that other sales executives were dealing with orders from customers he considered to be his own and he was not being paid commission on those orders. The Respondent, for their part, noted that the Claimant was failing to reply to emails from customers which raised the potential of those orders being lost altogether (pages 539 to 545). There were also complaints from customers about the service given or not given by the Claimant (pages 546 to 549).
- 11.10. On 6 March 2022, the Claimant had an exchange of messages with a customer which had a substantial order history with the Respondent. The person he messaged was his former partner and the Claimant's tone was threatening using foul language, a comment that he would go direct to this customer's own clients to obtain orders and also made reference to pictures of this person's breasts having been seen by many people.
- 11.11. The relationship between the Respondent and Mrs Brinkler in particular continued to deteriorate and on 22 July 2022 he raised a formal grievance (page 227). He complained that he was being refused access to Clarity, was not being paid commission on repeat orders and was not being remunerated fairly. He attended a grievance meeting on 7 September 2022 chaired by Mrs Brinkler. The minutes are at pages 244 to 245. His grievance was not upheld (page 246). The Claimant appealed against the grievance outcome and Ms Swift investigated this and recommended that the issues relevant to this case which were discussed would not be changed on appeal.
- 11.12. Since there had been so many issues with the Claimant missing emails and orders, the Respondent required him to provide timesheets giving details of the hours he had worked and what he had done during each working day. He failed to cooperate with this request and the Respondent decided to investigate the matter to determine whether disciplinary action ought to be taken. The Claimant attended an investigation meeting with Ms Woodhouse, HR Business Partner, who concluded that no formal disciplinary action should be taken against him at this time and a plan of action was agreed to avoid the issues which had arisen and led to the investigation meeting (page 326). Ms Julie Wharton of the Respondent was tasked with assisting the Claimant with his commission calculations subject to providing details of orders placed with him. Unfortunately, the Claimant continued to fail to do this.
- 11.13. On 13 January 2023 there was a Zoom meeting between the Claimant and Mrs Brinkler. During the meeting the Claimant became agitated demanding dispatch sheets which were not necessary to calculate his commission. He

began shouting over Mrs Brinkler. The Claimant refused to share information on new business he had been working on. As a result of this the Claimant was suspended pending a disciplinary investigation (page 363). He was then invited to a disciplinary hearing on 30 January 2023 (page 370). The disciplinary hearing was rearranged for 27 February 2023 and Ms Trickett chaired the hearing which was to consider the Claimant's alleged inappropriate, aggressive and unprofessional conduct within the workplace including shouting and arguing with a Director in an aggressive and inappropriate manner, refusing to provide the Director with a list of his business development activities, refusing to carry out reasonable business development activities and refusing to provide the Respondent's Accounts Team with a monthly commission sheet. Additionally, it was alleged he had consistently failed to meet the level of customer service expected of the Respondent's Sales Team and his conduct and attitude within the workplace repeatedly fell below an acceptable standard (page 406).

11.14. The minutes of the disciplinary hearing are at pages 408 to 454.

11.15. The outcome of the disciplinary hearing was that the Claimant was guilty of unprofessional misconduct and it was apparent to Ms Trickett that the working relationship between the Claimant and the Respondent had broken down. She noted that his previous conduct and behaviour was of genuine concern and she had serious doubts whether the Company could withstand that sort of behaviour and disruption moving forward. Accordingly, the Claimant was dismissed with immediate effect but paid 12 weeks' pay in lieu of notice.

11.16. The Claimant appealed the decision which he said in evidence was because he had to go through all the correct legal motions before he could bring a claim. He agreed in his oral evidence on several occasions that the relationship between him and the Respondent had broken down.

Submissions

12. Both the Claimant and Mr Bunting made oral submissions. We do not rehearse them hear but refer to them as relevant in our conclusions below.

The Law

13. Section 98 of the Employment Rights Act 1996 ("ERA") provides:

"(1) In determining for the purposes of this Part 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.

(2) A reason falls within this subsection 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.

(3) In subsection (2)(a)—

(a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) “qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) 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.”

14. Section 20 and 21 of the Equality Act 2010 (EqA”) provide:

“Duty to make adjustments

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

(2) The duty comprises the following three requirements.

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

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

- (a) removing the physical feature in question,*
- (b) altering it, or*
- (c) providing a reasonable means of avoiding it.*

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

- (a) a feature arising from the design or construction of a building,*
- (b) a feature of an approach to, exit from or access to a building,*
- (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or*
- (d) any other physical element or quality.*

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.”

“Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.”

15. Section 27 of the Equality Act 2010 (“EqA”) provides:

“Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.”

16. We refer to case law as we consider relevant in our conclusions.

Discussion and Conclusion

17. It is fair to say that the panel found this hearing to be quite emotionally charged. The Claimant was a longstanding employee of the Respondent and he clearly had a very good relationship with Mr Brinkler. Indeed, they were most cordial to each other when the Claimant was cross-examining Mr Brinkler and Mr Brinkler, in particular, was very upset that matters had reached a hearing in the Tribunal.

18. The Claimant did on a number of occasions become visibly agitated and his cross-examination of Mrs Brinkler was occasionally somewhat aggressive. Reasonable adjustments were made for him throughout the hearing. These consisted of regular breaks, particularly when he seemed to be agitated, and giving him extra time to consider the bundle and the Respondent's witness statements. Unfortunately, he had not studied the bundle or witness statements in any detail, if at all, and this hindered his case. We noted that, even having been given extra time to consider documents and statements, he said he had not read them all and this undoubtedly affected the way he presented his case.

19. We consider the claims below in the order they appear in the agreed List of Issues.

20. We firstly consider the claim of unfair dismissal. The evidence before us sets out a number of incidents involving what can be said to be acts of misconduct by the Claimant. The correspondence with his former partner at a major customer of the Respondent's contained threats and very bad language. Further, as referred to above, when he remained working from home when the Respondent's operations came back to life after Covid lockdown, the Claimant proceeded on the basis that other sales executives were stealing his customers resulting in lost commission. The Claimant then sought to attach blame for this to Mrs Brinkler and Ms Wharton as well as the other sales executives. His view that he had customers for life (for want of a better description) is not actually supported by his own evidence. At page 209 is a message to him from Mrs Brinkler concerning one of the Claimant's customers who had placed another order with one of the other sales executives who had had to undertake quite a bit of work to satisfy that order. Mrs Brinkler suggested that it might be appropriate to split the commission, which is what the Claimant agreed to do because, as he said in evidence, it seemed the right thing to do.

21. We have also seen evidence from a number of customers who were concerned at the Claimant's lack of response to their enquiries which the Claimant tried to brush

off with excuses such as *“Sorry, I must have missed that”*.

22. Whilst working from home, the Claimant often seemed to be offline. He was provided with a laptop but preferred to use his phone and iPad because, as he said on one occasion, he could work with them from the sofa. He was not accounting for his time when working from home and consistently refused to fill in timesheets or give details of his business development activities on the basis that he said Mrs Brinkler and/or Ms Wharton would give all of his details to other sales executives so he would lose all commission.
23. We accept Mrs Brinkler's evidence that she found it extremely difficult to manage the Claimant and that during the grievance hearing he talked and shouted over her in an aggressive manner. What is more telling, however, is that the Claimant said on a significant number of occasions whilst giving evidence that he considered the relationship between him and the Respondent had completely broken down.
24. The Tribunal has considered the decision of the EAT in **Harper v National Coal Board [1980] IRLR 260 EAT** which held that so long as an employer can show a genuinely held belief that it had a fair reason for dismissal, that reason may be a substantial reason provided it is not whimsical or capricious. Further, in **Eszias v North Glamorgan NHS Trust [2011] IRLR 550 EAT**, the EAT held that an employee's poor inter-personal skills constituted a fundamental breakdown in trust and confidence as they prevented the “running of a harmonious and competent clinical department”. In the case before the Tribunal, the Claimant refused help from Ms Wharton, ignored reasonable management instructions, jeopardized relationships with customers and was often aggressive in meetings.
25. Accordingly, the Respondent, having followed a detailed and fair procedure using outside personnel to show their independence, we consider that a reasonable employer would undoubtedly have reached the same conclusion and the decision to dismiss with notice being paid in lieu was the response of a reasonable employer and the unfair dismissal claim must fail.
26. In relation to the reasonable adjustments claim, the Claimant identified the Provision, Criterion or Practice (“PCP”) as *“an expectation to work from home only using his personal mobile phone to read and reply to customer emails until March 2022”*. We have to consider whether that PCP put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability in that he says he was unable to read from the mobile phone screen properly and the phone's email software re-arranged emails making it more difficult to read.
27. The Claimant did not adopt this line of reasoning in the hearing or in his witness statement. Indeed, in respect of the lack of a laptop for some time, when he did receive one he quite clearly preferred to engage with customers on his phone and iPad as opposed to the laptop. There is evidence in the bundle that he was asked to use the laptop to send emails but he ignored this request. Thus, we cannot find that

he suffered a substantial disadvantage in not having a laptop when he failed to use it when he did have it. Further, the Claimant cannot rely on the stated PCP because there is no evidence it existed, the Claimant being the only sales executive working from home at the material time.

28. The Claimant also relies on the lack of an auxiliary aid, namely, the laptop and access to the Clarity Management System from home. He argues that the lack of these aids put him at a substantial disadvantage compared to someone without his disability because his short term memory problems meant he was unable to check data from home that enabled him to perform his job and he was unable to read the mobile phone screen properly (as above). In the context of this claim, this argument does not make sense. Nowhere within his claim form, his witness statement or his oral evidence does he argue that access to the Clarity Management System caused the disadvantage of him being unable to check data from home because of his short term memory problems. It is clear on the evidence that the Claimant refused to fill in details of customers, prospective customers and orders so that Ms Wharton could calculate any commission due to him and the Respondent could generally understand what he was doing when working from home. The reality is that he did not need to check "data" but rather he wanted access to the Clarity system so he could monitor the orders made by other sales executives to ensure that they were not being paid commission which he should have received.
29. The Claimant suffered no substantial disadvantage in relation to these PCP's as he was still able to do his job.
30. For the purposes of the victimisation claim, the Claimant did do a protected act by submitting his grievance on 22 July 2022. He says that on 13 December 2022 Ms Wharton stopped helping him with admin tasks. Further, he was then disciplined and ultimately dismissed on 17 March 2023. As regards Ms Wharton, we do not find she simply stopped helping the Claimant with his administrative tasks. What we do find is that he refused to send information she needed to help him. This is recorded in an email exchange on 13 December 2022 (pages 348 to 350) where Ms Wharton again tells the Claimant what information she needed and he responds that he doesn't have the information he needs as he has been stopped from seeing it. This, we understand, is his access to the Clarity system which was simply not necessary for the purposes of processing his orders and paying his commission. It is perfectly clear that the reason Ms Wharton stopped helping the Claimant is that he refused to give her the information she needed in order to do so.
31. We do not find on the evidence that the Claimant was disciplined and dismissed on 17 March 2023 because he raised a grievance. His grievance was dealt with comprehensively by the Respondent and it was not upheld. As we note above, the Claimant accepted throughout the hearing that the relationship between him and the Respondent had completely broken down and all trust and confidence the parties had in each other had evaporated. The Claimant was disciplined because of his

failure to co-operate with the Respondent, his failure to follow reasonable management instructions and his general attitude. He was dismissed for some other substantial reason and not because he had raised a grievance. Thus his grievance was not the cause of the detriments he claims to have suffered. His poor behaviour began well before he raised his grievance and continued thereafter and it was his conduct which was the cause of his suspension, investigation and ultimate dismissal. There is no evidence that the grievance played any part in his dismissal or that it was in the mind of the dismissing officer whether consciously or subconsciously. Following the decision in **Igen Limited and ors v Wong [2005] ICR 931 CA**, there is no evidence from which the Tribunal can find that the grievance was the cause of his dismissal or other claimed detriments.

32. The Claimant claims unauthorised deductions from his wages in respect of unpaid commission. This claim is clearly out of time and there is no evidence before us that it was not reasonably practicable for the Claimant to bring that claim within the 3 month time limit plus the Early Conciliation extension. The Respondent has not helped in relation to the claim to commission by failing to have in place written details of the circumstances in which commission would be paid to sales executives and how much. The burden of proof in respect of this aspect of his claim rests with the Claimant. Upon the Respondent's application for precise details of what the Claimant was claiming, Employment Judge Broughton ordered as follows.

33. On 16 April 2024:

"The Claimant must by no later than 30 April 2024 write to the Tribunal, copying in the Respondent, confirming the wages claimed for the furlough period and the commission claim. If the Claimant fails to provide this information, those claims may be struck out on the basis that they are not being actively pursued."

In the light of this order and the fact that the Claimant has not provided detailed calculations of the sums owed or the total amount being claimed, his claim must be dismissed as it is not in a form the Respondent could properly answer nor one that the Respondent could consider.

34. For the above reasons the claims fail and are dismissed.

APPENDIX 1

THE ISSUES

45. The issues the Tribunal will decide are set out below.

Unfair dismissal (Employment Rights Act 1996 Part X)

46. What was the reason or principal reason for dismissal? The respondent

says the reason was a substantial reason capable of justifying dismissal, namely a breakdown in trust and confidence.

47. Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

Remedy for unfair dismissal

48. Does the claimant wish to be reinstated to their previous employment?

49. Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

50. Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

51. Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

52. What should the terms of the re-engagement order be?

53. If there is a compensatory award, how much should it be? The Tribunal will decide:

53.1. What financial losses has the dismissal caused the claimant?

53.2. Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

53.3. If not, for what period of loss should the claimant be compensated?

53.4. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

53.5. If so, should the claimant's compensation be reduced? By how much?

53.6. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

53.7. Did the respondent or the claimant unreasonably fail to comply with it?

53.8. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

53.9. If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

53.10. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

53.11. Does the statutory cap apply?

54. What basic award is payable to the claimant, if any?

55. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

Reasonable Adjustments (Equality Act 2010 sections 20 and 21)

56. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

57. A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

57.1. An expectation to work from home only using his personal mobile phone to read and reply to customer emails until March 2022
(PCP1)

58. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was unable to read from the mobile phone screen properly and the phone's email software rearranged emails making it more difficult to read?

59. Did the lack of an auxiliary aid, namely

59.1. access to the Clarity Management System from home (AA1)

59.2. A laptop (until March 2022) (AA2)

put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that

59.3. His short-term memory problems meant he was unable check data from home that enabled him to perform his job;

59.4. (same disadvantage as for PCP1)

60. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

61. What steps could have been taken to avoid the disadvantage? The claimant suggests:

61.1. Remote access to the Clarity Management System (AA1);

61.2. Providing a laptop before March 2022 (PCP1 and AA2).

62. Was it reasonable for the respondent to have to take those steps [and when]?

63. Did the respondent fail to take those steps?

Victimisation (Equality Act 2010 section 27)

64. Did the claimant do a protected act as follows:

64.1. Complain of discrimination in his grievance of 22 July 2022?

65. Did the respondent do the following things:

65.1. On 13 December 2022, Julie Wharton stopped helping him with admin tasks.

65.2. He was disciplined and ultimately dismissed on 17 March 2023?

66. Do they amount to a detriment?

67. If so, was it because the claimant did a protected act?

Remedy for discrimination, harassment or victimisation

68. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

69. What financial losses has the discrimination caused the claimant?

70. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

71. If not, for what period of loss should the claimant be compensated?

72. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
73. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
74. Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
75. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
76. Did the respondent or the claimant unreasonably fail to comply with it?
77. If so is it just and equitable to increase or decrease any award payable to the claimant?
78. By what proportion, up to 25%?
79. Should interest be awarded? How much?

Employment Judge

.....M Butler.....

Date: 14 May 2025

JUDGMENT SENT TO THE PARTIES ON:

.....19 May 2025.....

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"Recordings and Transcription

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

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