



EMPLOYMENT TRIBUNALS

Claimant: Mr A Hakim

Respondent: London Underground Limited

Heard at: East London

On: 19 & 20 June 2025

Before: Employment Judge Reid

Representation

Claimant: Mr Adams

Respondent: Mr Winspear, Counsel

***To the Claimant:** written reasons were requested on 24 June 2025 but the request was not referred until 1 August 2025, after the Claimant had provided his response on the Respondent's costs application (on 4 July 2025). The Claimant therefore did not have these written reasons when responding to the costs application. He has a further **7 days** from the date these written reasons are sent to him to provide additional comments on the costs application (if any) now that he has these written reasons. He is only to send additional comments (if any) arising out of these written reasons. The decision on the costs application will then be made without a further hearing to avoid incurring further costs.*

JUDGMENT having been sent to the parties on 30 June 2025 and written reasons having been requested on 24 June 2025 in accordance with Rule 60 of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

1. The Claimant presented this claim on 10 September 2024 claiming a breach of s10 Employment Relations Act 1999, that the Respondent had not

permitted him to be accompanied at a disciplinary hearing; his claim specifically referred to the s10 right to be accompanied and the s11 right to claim.

2. The Claimant's claim form did not also include a claim under s13 Employment Relations Act 1999 (detriment) but such a claim was included in his further particulars of claim document (page 2 of this hearing's witness bundle said to in practice be the Claimant's witness statement). This further particulars document was undated – the index refers to it as dated 30 May 2025 and it had not been sent to the Tribunal before appearing in the witness bundle on the first day of this hearing. On 26 March 2025 the Claimant had again referred very clearly only to a claim under s10 in his opposition to the Respondent's strike out application. No application to amend the claim has ever been made to also include a claim under s13 – the only amendment application made was to change the Respondent's name to London Underground Limited.
3. The claim before me was therefore only a claim under s11 Employment Relations Act 1999 for a breach of s10 Employment Relations Act 1999.
4. I was provided with a witness statement from the Claimant (his further particulars document) and from Mr Stewart of the Respondent plus a 246 page electronic bundle. I heard oral evidence from the Claimant and from Mr Stewart.
5. It emerged at the beginning of the Claimant's evidence that his representative Mr Adams had not sent the Claimant the entire agreed hearing bundle but had only sent him some of it, to avoid he said, confusing the Claimant. There therefore had to be a break so that the Claimant could be sent the entire bundle to view on his laptop – I allowed a break of 15 mins to give the Claimant time to familiarise himself with the bundle (although it contained documents he was largely familiar with already).
6. I heard oral submission on both sides.

Findings of fact

7. The Claimant was off sick from December 2023 following a difficult incident at work.
8. The Respondent has a case conference procedure where an employee has been absent due to illness (page 118); there are 3 steps: reasonable adjustments, redeployment and medical termination, but these are not formally linked to step 1 step 2 and step 3 meetings; the steps can be used at any time, there can be more than three meetings in total and more than one meeting to discuss a particular step.
9. Page 118 says nothing specific about the right to be accompanied at any of the case conferences but does refer to a further person attending if the

employee chooses either a trade union representative or a colleague to accompany them.

10. The Respondent set up what it called the first case conference for Friday 17 May 2024 (page 124); there was no suggestion in the invitation that the meeting was disciplinary in nature.
11. The invitation letter however said that the Claimant had the right to be accompanied but that if his chosen companion could not attend he could ask for another date provided it was within 7 calendar days of the original date. The Claimant was due to be accompanied by Mr Adams.
12. At the request of both the Claimant and Mr Adams the date was changed to Monday 20 May 2024 because Friday was a day of religious observance for the Claimant and Mr Adams. Both the Claimant and Mr Adams duly attended on 20 May 2024 (page 126).
13. It was a short meeting to see how the Claimant was but the outcome was that there would be a second meeting after the Claimant's next OH appointment booked for 11 June 2024; the content of the discussions was consistent with the invitation not having said anything about disciplinary action which could result – it was not that kind of meeting but a review of how the Claimant was health wise.
14. The Claimant was then invited to a second case conference on 17 June 2024 (page 128 letter dated 4 June 2024).
15. As the previous letter had said about the previous meeting, the Claimant was again advised that he had the right to be accompanied by either a trade union representative or a colleague but that it was his responsibility to advise his chosen companion of the date and time.
16. Unlike the invitation to the previous meeting, this invitation now also said in para 4 that a possible outcome was consideration of termination on medical grounds, though that was at odds with para 1 which more accurately reflected the purpose of this meeting identified at the previous meeting, as being a further review of his health in line with the new OH report. This reference now to possible termination was inconsistent with how things had been left at the previous meeting, namely that this (second) meeting was to review how the Claimant was and to discuss the OH report.
17. The Respondent's case is that the inclusion of this reference to possible medical termination in the letter was an error arising from the use of a template; the Claimant however was being presented with a letter calling him on the face of it to a disciplinary meeting and being told he had the right to be accompanied, consistent with that reference to possible termination.
18. The Claimant was entitled to take the letter at face value – he could have queried the invitation as being at odds with how things were left at the previous (first) meeting but he was an employee who had been off sick for a significant period and was worried about his future – it was not his

responsibility to check with the Respondent whether the letter was correct or not.

19. The hearing was to take place at 12.00.
20. Mr Adams completed a release form on 10 June (page 133) which noted that he was due to start work at 15.13 the day of the meeting; he amended it in manuscript to reflect that it was a release for a workplace meeting and not trade union duties.
21. On 12 June 2024 (page 130) Mr Adams emailed Mr Darlison who was due to hold the meeting ; Mr Adams said that the train managers had refused Mr Adams' request in his release form.
22. I find that Mr Adams had decided that he could not attend the meeting at 12.00 (in what would have been non-work time) because he had other things to do that morning (page 134, what the Claimant told the meeting as to why Mr Adamas could not attend).
23. Mr Adams' concern was also about not being paid for the time spent at the meeting; he could not be paid as it was not work time – there had been problems about his being paid for the previous meeting in May 2024 (page 137-138).
24. Mr Adams said in his email to Mr Darlison that it was now up to the Claimant to make other arrangements but said that the Claimant was now short on time to do so.
25. Mr Adams did not ask for a different date.
26. The Claimant also did not ask for a different date, either to give him time to find an alternative companion or to enable Mr Adams to attend at a time Mr Adams was available.
27. The Claimant was well within his rights to ask for a different date and he and Mr Adams knew from the previous meeting in May that a meeting date could be re-arranged if either the Claimant or Mr Adams was not free.
28. When the meeting took place on 17 June 2024 (page 134) the Claimant was asked how he was and a graduated return to work plan was discussed; it was only when the Claimant was asked if he agreed to the proposed return to work plan that the Claimant referred to not being happy about attending the meeting without a companion; he had not said anything about it until that point despite being aware since at least 12 June that Mr Adams could not attend and that unless he found someone else for that date or asked for another date (for either Mr Adams or someone else to attend with him) he would be attending on his own; notwithstanding he had only raised it now, the Respondent adjourned the meeting between 12.15 and 14.45, a

substantial break, to give the Claimant time to speak to his colleague; the Claimant confirmed at this hearing that in that break he spoke to a different trade union representative. After that adjournment the Claimant came back and terms were agreed about his return to work including the Claimant's requirement that in the first 4 weeks he should not drive alone. In the event the meeting had in fact been nothing to do with a medical termination or any disciplinary action, despite what the letter of invitation had said.

Relevant law

29. S10(1) Employment Relations Act 1999 gives a worker the right to be accompanied at a disciplinary hearing where the worker reasonably requests it.
30. The companion must be chosen by the worker (s10(2A)(a)).
31. If the chosen companion will not be available the worker has the right to propose another time provided the alternative time is before the end of the period of five working days beginning with the first working day after the original date.
32. A disciplinary hearing is defined in s13(4) – it is defined by reference to what could result in terms of a warning or some other action.
33. I have also considered the ACAS code of Practice on Disciplinary and Grievance Procedures 202 paras 13-16.

Reasons

34. Taking the above findings of fact into account the Claimant was sent an invitation to a meeting to be held on 17 June 2024 and the invitation letter said the termination of his employment on medical grounds was a possibility.
35. The Respondent says this was an error and I accept that it was an error taking into account the previous meeting and how it was left and what actually was discussed at this meeting. The minutes show that in the event it was just a return to work meeting to discuss the proposed arrangements.
36. However an employer has the greater power in the employment relationship and the Claimant was entitled to take the letter of invitation at face value in his then situation; I find that the right to be accompanied under s10 was triggered by the invitation to the meeting given its reference to potential termination.
37. If an employer can argue that they didn't really mean it when telling an employee that termination is a possibility or argue that in the event termination wasn't in fact discussed, that would undermine the purpose of the statutory right which is to ensure that a worker apparently being called to a disciplinary meeting with termination as a possibility, can request to be accompanied; that interpretation is also in line with the fact that the meeting

only potentially has to result in disciplinary action to attract the right – it does not in fact matter whether in the event it does or doesn't result in termination or disciplinary action, it is about the protection of the worker faced with that possibility.

38. The meeting on 17 June 2024 was therefore a disciplinary hearing within s13(4) Employment Relations Act 1999.
39. As regards whether there was a breach of the right in s10 in relation to that meeting the Respondent was obliged to arrange an alternative date under s10(5) but only if the Claimant proposed an alternative date within a 5 working day period.
40. It is up to the worker to say if they want an alternative date due to non-availability.
41. It is also up to the worker to chose who they want to attend and they can change their mind - it was open to the Claimant to say he either wanted someone else to attend with him on 17 June 2024 or to ask for a different date to allow Mr Adams (or someone else not free on 17 June 20234) to attend with the Claimant.
42. The Claimant did not ask for any of these options before the meeting or ask at the meeting for a postponement due to companion non-availability.
43. I therefore find that the right in s10 was not breached by the Respondent because it did not refuse a request to be accompanied – the Claimant's original choice Mr Adams could not attend and had the Claimant proposed an alternative time the Respondent would have been obliged under s10(4) to rearrange the time, but the Claimant never asked for a different time/date. It follows that there was no refusal to allow him to be accompanied because the Claimant did not make that request.
44. The Claimant's claim under s11 Employment Relations Act 1999 for breach of s10 Employment Relations Act 1999 is therefore dismissed. The Respondent did not fail to permit the Claimant to be accompanied by his chosen companion at the meeting on 17 June 2024 ; the Claimant did not ask for an alternative time for the meeting to enable a companion to attend with him. There was therefore no request from the Claimant which the Respondent refused.

Approved by
Employment Judge Reid
Date: 7 August 2025