EMPLOYMENT TRIBUNALS

Claimant: Miss L Ayad

Respondent: WL Retail Ltd

At: London Central Employment Tribunal

On: 28 July 2025

Before: Employment Judge Brown

Appearances
For the claimant: In Person, with her mother as lay representative
For the respondent: Did not appear and was not represented

JUDGMENT

The Judgment of the Tribunal is that:

1. **The respondent automatically unfairly dismissed the claimant because she had made protected disclosures.**
2. **The claimant mitigated her loss.**
3. **It was not appropriate to order reinstatement or re engagement as a remedy for dismissal because the respondent is entering insolvency and it would not be practicable for the claimant to be reinstated or reengaged when the respondent is not trading.**
4. **The respondent wrongfully dismissed the claimant, when it dismissed her without notice.**
5. **The respondent subjected the claimant to a detriment on the grounds that she had made protected disclosures, by subjecting the claimant to a disciplinary meeting on 10 January 2024.**
6. **The respondent made unlawful deductions from the claimant's wages when it failed to pay her any wages for April 2024.**
7. **The respondent failed to pay the claimant holiday pay accrued at the termination of her employment.**
8. **The respondent breached the claimant's contract when it failed to make NEST pension payments in August September and October 2023.**
9. **It is appropriate to apply an ACAS uplift of 10% to the Claimant's complaints, for breach of the ACAS Code of Practice.**
10. **The calculation of the compensation due to the Claimant shall be determined in a separate remedy, written judgment.**

REASONS

1. The claimant was employed by the respondent as a part time shop assistant, from 5 May 2023 until 24 April 2024. The Claimant presented her claim form was presented on 12 July 2024.

2. The respondent defended the claim.

3. On 25 June 2025 the respondent wrote to the Tribunal and the claimant, informing them that WL Retail Ltd, the respondent, ceased trading on 3 June 2025 and that its director had instructed that the Company be placed into liquidation, as it was unable to pay its liabilities as they fell due. It said that Andrew Hook, of Begbies Traynor, had been appointed as proposed liquidator.

4. On 15 July 2025, Mr Hook wrote to the Tribunal, confirming that the respondent would be entering into voluntary liquidation.

5. On 16 July 2025, the respondent's director wrote again to the Tribunal, confirming that neither the respondent, nor its director, would be attending the final hearing in this claim and that any judgment in favour of the claimant would rank as an unsecured claim against the Company.

6. The Tribunal converted this final hearing to a one day hearing, before a Judge Sitting Alone.

7. The issues in the complaints had been established at a Preliminary Hearing before EJ Joffe as follows:

    1. Unfair dismissal

        1.1 Was the reason or principal reason for dismissal that the claimant made a protected disclosure (as set out below)? The respondent says that reason was misconduct.

    If so, the claimant will be regarded as unfairly dismissed.

    2. Remedy for unfair dismissal

        2.1 Does the claimant wish to be reinstated to her previous employment?

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

        2.3 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.

2.4 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

2.5 What should the terms of the re-engagement order be?

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

2.6.1 What financial losses has the dismissal caused the claimant?

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

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

2.6.4 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?

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

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

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

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

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

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

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

2.8 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?

3. Wrongful dismissal / Notice pay

3.1 What was the claimant's notice period?

3.2 The claimant was not paid for her notice period.

3.3 Was the claimant guilty of gross misconduct? / did the claimant do something so serious that the respondent was entitled to dismiss without notice? The respondent says that the claimant was persistently late, failed to attend meeting to discuss her lateness and behaved in a rude and unhelpful way.

4. Protected disclosure

4.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

4.1.1 What did the claimant say or write? When? To whom? The claimant says they made disclosures on these occasions:

4.1.1.1 In a discussion with her line manager, did the claimant say the shop was too cold because there was no heater and the door was kept open [claimant to clarify date or approximate date?]?

4.1.1.2 In a series of WhatsApp messages in a shop WhatsApp group, did the claimant say that the shop was too cold because the door was kept open and there was no heater and that this was a breach of the minimum required working temperature and/or a risk to health and safety [claimant to clarify dates]?

4.1.2 Did she disclose information?

4.1.3 Did she believe the disclosure of information was made in the public interest?

4.1.4 Was that belief reasonable?

4.1.5 Did she believe it tended to show that:

4.1.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation;

4.1.5.2 the health or safety of any individual had been, was being or was likely to be endangered?

4.1.6 Was that belief reasonable?

4.2 If the claimant made a qualifying disclosure, was it made:

4.2.1 to the claimant's employer?

If so, it was a protected disclosure.

5. Detriment (Employment Rights Act 1996 section 48)

5.1 Did the respondent do the following things:

5.1.1 Calling the claimant to a disciplinary meeting on 10 January 2024

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

5.3 If so, was it done on the ground that they made a protected disclosure?

6. Remedy for Protected Disclosure Detriment

6.1 What financial losses has the detrimental treatment caused the claimant?

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

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

6.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

6.5 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

6.6 Is it just and equitable to award the claimant other compensation?

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

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

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

6.10 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?

6.11 Was the protected disclosure made in good faith?

6.12 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

6.13 Should interest be awarded? How much?

7. Holiday Pay (Working Time Regulations 1998)

7.1 What was the claimant's leave year?

7.2 How much of the leave year had passed when the claimant's employment ended?

7.3 How much leave had accrued for the year by that date?

7.4 How much paid leave had the claimant taken in the year?

7.5 Were any days carried over from previous holiday years?

7.6 How many days remain unpaid?

7.7 What is the relevant daily rate of pay?

8. Unauthorised deductions

8.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted? The parties agree that the claimant was not paid for the work she performed in April 2024 but there is a dispute as to the amount owing,

9. Breach of Contract

9.1 Did this claim arise or was it outstanding when the claimant's employment ended?

9.2 Did the respondent do the following:

9.2.1 Fail to pay pension contributions for the claimant in August and September 2023?

9.3 Was that a breach of contract?

9.4 How much should the claimant be awarded as damages?

8. I heard evidence from the claimant and from her witness, Olivia Meek, the claimant's former colleague. There was a Bundle of Documents which had been agreed between the parties.

9. The respondent did not attend, nor did it provide any witness statements. However, I took into account its ET3 and the documents in the Bundle, including its detailed "Response to Updated ET1 Claim" dated 30 April 2025, and its response document to the claimant's request for further information, p136 – 141. I asked the claimant about the contents of these documents during the claimant's evidence.

10. There were transcripts of WhatsApp messages in the Bundle.

11. The Claimant made closing submissions.

The Facts

12. The claimant was employed by the respondent as a part time shop assistant, at its 'Whipped' café in Covent Garden, from 5 May 2023 until 24 April 2024.

13. The respondent was owned by Alice Churchill and Jamie Musialek.

14. The claimant's contract of employment, p62, provided, by clause 3, that the claimant would have a probationary period of 3 months. It provided that the claimant's hourly rate of pay would be £12.75.

15. While the contract provided that the claimant's normal hours of work would be 40 hours each week, the claimant was employed part time and never worked 40 hours each week. From the commencement of her employment, the claimant generally worked 9.30am – 3.00pm on Monday, Wednesday and Friday.

16. By clause 14, the contract provided that, "after the probation period, the Employee will be automatically enrolled in the following pension scheme: Nest pension scheme."

17. By clause 21 of her contract of employment, the holiday year ran for 1 year from 1 January each year. She was entitled to 28 days' holiday each year.

18. By clause 55, the contract provided that, "The Employee and the Employer agree that reasonable and sufficient notice of termination of employment by the Employer is the greater of four weeks or any minimum notice required by law."

19. At the start of the Claimant' employment, she had a good relationship with her manager, Elijah, and the respondent's owners.

20. On 12 May 2023, Ms Churchill Whatsapp'd the Claimant saying, "The universe pointed you in our direction and your destiny was whipped…. you know you have a life long contract, right! You are part of the family now". On 10 June 2023, Ms Churchill Whatsapp'd, "why can't the world have more Leila's!" On 24 June 2023, in response to the Claimant's message that she was happy she had found 'Whipped', Ms Churchill wrote, "Likewise! You are on a lifelong contract".

21. When Elijah, the claimant's manager, had failed to assist the claimant with a delivery, in August 2023, he apologised to the claimant and said, "thank you for accepting my apology and being so cool about it. I owe you big time…" p174. On 10 January 2024, Elijah Whatsapp'd the claimant saying, "Hey Leila, thank you for writing and sending me this message, I appreciate it. And likewise, my chat with Jamie was to help me to become a better leader and how to deal with situations like this better in future." P177.

22. The respondent's owners had a rule that the café door was to be kept open, to increase customer footfall. This meant that, during winter, temperatures inside Whipped café were sometimes very low.

23. There were 2 Whtasapp Groups for staff at the Whipped café. One was the company Whatsapp. The owners were part of this Group. The other was for staff, for day to day matters. It did not have the owners as part of the Group.

24. On 29 November 2023, the Claimant and Ms Churchill had the following exchange on the company Whatsapp, p82,

> "[29/11/2023, 16:17:29] Leila: Hey guys. I need to bring to attention the temperature in the shop is getting very cold now with the weather outside. I have spoken to Elijah and he has let me know that we will not be getting a heater nor are we allowed to close the door. Please may this be reconsidered as it was very cold all day today and it's difficult to work like that. I was also wearing 3 layers and a thermal vest
>
> [29/11/2023, 16:19:13] Alice: Hey everyone. Last time we had a heater someone left it on overnight with a piece of paper over it and as a result the shop nearly burnt down.
>
> [29/11/2023, 16:27:26] Leila: I understand the trepidations but most of us were not working then and it was not our fault, I do believe we will all be responsible. The shop was at 12 degrees today
>
> [29/11/2023, 16:28:22] Leila: Also with restocking the fridge etc we are constantly in cold"

25. On 7 December 2023, the Claimant wrote on the staff Group Chat, to the manager, Elijah, "I've also heard that in terms of health and safety the working environment has to be above 16 degrees."

26. I accepted the Claimant's evidence that a regular customer had told her this and that the Claimant had also Googled the matter - and had read that the Health and Safety Executive advised that, for indoor workplaces, the minimum temperature should be 16C.

27. Later that day, on the company GroupChat including the owners, Ms Churchill said, " As Elijah said the door is to be kept open please to avoid customers walking off. It's made a massive difference to the business and customers not coming in as it creates a different experience. A heater had been ordered so I trust you will manage this and ensure this is not left on overnight."

28. On 22 December 2023 the Claimant's line manager, Elijah, told the Claimant, "Alice is on her last straws with you." The Claimant had been only five minutes late to work and commented that she didn't know she was on any straws at all. She asked if this was a verbal warning. Eijah shrugged and said, "Take it as you want, I am just telling you what she said."

29. Two days later, on 24 December 2023, the Claimant asked Elijah if other staff, such as Rishi, were also being warned. Elijah replied, "Well, he's 16, and it's not just the lateness, it's other things" … "there are other issues too."

30. Staff at the Whipped café were late on a regular basis, as shown by numerous WhatsApp messages communicating their reasons for this, p89.
31. On 10 January 2024, the Claimant was called to a meeting with Jamie Musialek, the other Company owner. Mr Musialek accused the Claimant of lateness, having a messy stockroom, needing training on baking cookies and of criticising him and his wife at the staff Christmas party. He did not say what the Claimant was alleged to have said at the Christmas party. No additional training was ever provided.

32. From January 2024, the Claimant's working hours were reduced, by about 1 hour each shift, so that she now finished at 2pm. She had previously been allocated 17 hours a week, on a regular basis.

33. The Claimant asked to be able to work compressed hours in February 2023. Her request was accepted, but she continued to work reduced hours, of about 13.5 hours each week, p131.

34. The Respondent suggested that the Claimant's reduced hours were because of lack of available hours. However, from the rotas shown to the Tribunal, it appeared that, from January 2024, some other staff worked longer hours and that more staff were being hired. For example, Rishi, who had previously been working 10.5 hours a week, started to work 18 hours per week. Elijah, the manager, who worked on Monday and Wednesday like the Claimant, increased his hours to 44 – 45, up from 40 hours per week. New employees, some of whom who worked on Mondays and Wednesdays, were recruited, including Tobi and Breanna, p130.

35. In April 2024, the respondent asked the Claimant to attend meetings, but she was unable to make the dates requested because of childcare and other reasons.

36. On 24 April 2024 Ms Churchill emailed the Claimant, dismissing her without notice. Ms Churchill said,

    "We would have liked to have discussed the following with you in person, but unfortunately, despite offering potential dates for a meeting this week, you were unable to attend any suggested dates or times.

    As you are aware, over the past few months, there have been various verbal and formal warnings regarding your poor time keeping, attitude towards the role and respect for your team and workplace. We had hoped for some marked improvement with your performance since our last conversation, but if anything, it seems to have deteriorated and based on observations and manager and colleague feedback it is clear that you show no desire to maintain the role and have been very vocal in feeding this fact back to your co-workers.

    With this in mind and due to the continual issues with your performance and attitude in the workplace, we will be terminating your employment with immediate effect." P94.

37. I accepted the Claimant's evidence that she had never opened the café late (even if she had arrived at work late, before the café opened) and that the café's produce was never affected by her being late to work.

38. I accepted the Claimant's evidence that, on 14 December 2023, when she was slightly late to work, she had not been told that a delivery was due and, in any event, the delivery was accepted by a neighbouring trader on the respondent's behalf.

39. The Claimant was not paid her notice pay.

40. She was not paid for her accrued, but untaken, holiday, at the end of her employment.

41. The Claimant worked 39 hours in April 2024, but was not paid for April 2024.

42. I accepted the Claimant's evidence that she worked 206 hours from 1 January – 24 April 2024, as shown on the rota sheets.

43. The Respondent did not make NEST payments for the Claimant until November 2023, p121 – 122. She was therefore not enrolled in the NEST pension scheme after completing her probationary period on 5 August 2023.

44. The Claimant provided a detailed list of the applications she had made since dismissal, p207. I found that she had made 38 job applications in the period April 2024 – May 2025. I accepted the Claimant's evidence that her job search was somewhat hampered by the fact that she is a single parent who needed similar part time work to the work she had undertaken at the Respondent. Her child requires additional help and support.

Law

Law - Wages

45. s13 Employment Rights Act 1996 a worker has the right not to suffer unauthorized deductions from wages. By s27 ERA 1996 "wages" is defined. By s27(1), "In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including: a) any fee, bonus, commission, holiday pay or other emolument referable to his employment whether payable under his contract or otherwise. …" .

Law - Notice Pay

46. By Employment Tribunals (Extension of Jurisdiction) England & Wales Order 1994 the Employment Tribunal has jurisdiction with regard to contractual claims arising or outstanding at the termination of the employment of an employee.

Law - Holiday Pay

47. Under Regs 13 & 13A Working Times Regulations 1998 workers are entitled to take paid holidays and to be paid holiday pay. The right under Reg 13 is 4 weeks;

the right under Reg 13A is 1.6 weeks, meaning that a worker has a right to 5.6 weeks paid holiday. Under Regulation 14 WTR 1998, an employee is to be entitled to be paid, at termination of employment, the proportion of holiday that he is entitled to in proportion to the holiday year expired, but which has not been taken by the employee during that time.

48. Regulation 14(3) provides for calculation of the amount of holiday pay due in these circumstances as follows: (A x B) less C, where A is the period of leave to which the worker is entitled, B is the proportion of the leave year expired and C is the period of leave taken.

Law - Wrongful Dismissal

49. Where an employee has committed a repudiatory breach of contract, the employer can accept the repudiation, resulting in summary dismissal. The degree of misconduct necessary in order for the employee's behaviour to amount to a repudiatory breach is a question of fact for the Tribunal to decide. In Briscoe v Lubrizol Ltd [2002] IRLR 607, the Court of Appeal approved the test set out in Neary v Dean of Westminster [1999] IRLR 288, ECJ, where the Special Commissioner held that the conduct, "must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment.

Law - Protected Disclosures

50. An employee who makes a "protected disclosure" is given protection against his employer from subjecting him to a detriment, or dismissing him, because he has made such a protected disclosure.

51. "Protected disclosure" is defined in *s43A Employment Rights Act 1996*: "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."

52. "Qualifying disclosures" are defined by *s43B ERA 1996*,

53. "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 - ……..

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

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

54. The disclosure must be a disclosure of information, of facts, rather than opinion or allegation (although it may disclose both information and opinions/allegations). Although there is no strict dichotomy between an allegation and the disclosure of information, a bare assertion, devoid of factual content, such as, "You are not complying with health and safety requirements", will not constitute a valid

protected disclosure, *Cavendish Munro Professional Risk Management v Geldud* [2010] ICR 325 [24] – [25].

55. In order for a statement to be a qualifying disclosure for the purposes of s43B(1) ERA, it had to have sufficient factual content and specificity capable of tending to show one of the matters listed in paragraphs (a) –(f) of that section*, Kilraine v LB Wandsworth* [2016] IRLR 422.

56. in *Simpson v Cantor Fitzgerald Europe*, both the EAT ([2020] ICR 252) and the CA ([2021] IRLR 238) held there is also no such rigid dichotomy between information and queries: EAT at [para 42] and CA at [para 53]. The key question is whether the statement carries information of sufficient factual content and specificity to satisfy the *Kilraine* threshold.

57. It is possible to aggregate more than one communication to collectively amount to a protected disclosure, *Norbrook Laboratories (GB) Ltd v Shaw* [2014] ICR 540, where the EAT held at [22] that an earlier communication can be read together with a later one as 'embedded' in it, such that two communications can, taken together, amount to a protected disclosure, though it is a question of fact for the ET whether they do so. In the EAT decision in *Robinson v Al Qasimi* [2020] IRLR 345, Lewis J gave guidance at [para 71] as to when it was appropriate to read a later disclosure with an earlier one, namely when the later disclosure 'expressly or by necessary implication refers to, or incorporates, the information provided in the earlier disclosure'. He held it may do so: By referring expressly to the earlier disclosure; By attaching or enclosing a copy of the earlier protected disclosure; or The context may make clear that the later disclosure is to be read with the earlier one.

58. In *Kraus v Penna plc* [2004] IRLR 260, the EAT held [para 24] that where the word 'likely' is used, it means that the information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable or more probable than not that the employer will fail to comply with the relevant legal obligation.

59. A qualifying disclosure is a protected disclosure if it is made to the employee's employer, or other responsible person, *s43C ERA 1996.*

Law - Automatically Unfair Dismissal

60. A whistleblower who has been dismissed by reason of making a protected disclosure is regarded as having been automatically unfairly dismissed, *s103A ERA 1996*, "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".

61. Where a claimant lacks two years' qualifying service (and hence is unable to bring an ordinary unfair dismissal claim), the burden rests on him to prove that the reason/principal reason for his dismissal is that he made a protected disclosure: see *Ross v Eddie Stobart Ltd* [2013] (UKEAT/0068/13), at [paras 16-17, 23].

62. A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him which cause him to dismiss the employee; Cairns LJ in *Abernethy v Mott, Hay and Anderson* [1974] IRLR 213, at [13].

Reinstatement and Re engagement Ss 112 – 115 Employment Rights Act 1996

63. If the complainant expresses such a wish, the Tribunal may make an order for reinstatement or re-engagement as a remedy for unfair dismissal: s112, 113 ERA 1996. In deciding whether to order reinstatement or re engagement, the Tribunal is required to take into account (a) the complainant's wishes, (b) whether it is practicable for the employer to comply with an order for reinstatement, and (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement: s116, ERA.

Mitigation of Loss

64. When calculating the compensatory award in an unfair dismissal case, the calculation should be based on the assumption that the employee has taken all reasonable steps to reduce his or her loss. If the employer establishes that the employee has failed to take such steps, then the compensatory award should be reduced so as to cover only those losses which would have been incurred even if the employee had taken appropriate steps.

65. Sir John Donaldson in *Archibald Feightage Limited v Wilson* [1974] IRLR 10, NIRC said that the dismissed employee's duty to mitigate his or her loss will be fulfilled if he or she can be said to have acted as a reasonable person would do if he or she had no hope of seeking compensation from his or her employer.

66. In *Savage v Saxena* 1998 ICR the EAT commented that a three-stage approach should be taken to determining whether an employee has failed to mitigate his or her loss. The Tribunal should identify what steps should have been taken by the Claimant to mitigate his or her loss. It should find the date upon which such steps would have produced an alternative income and, thereafter, the Tribunal should reduce the amount of compensation by the amount of income which would have been earned.

Law - ACAS Code of Practice

67. The ACAS Code of Practice 1 Code of Practice on disciplinary and grievance procedures, published 11 March 2015, applies to dismissals other than for redundancy and on expiry of a fixed term contract.

68. Tribunal can make an uplift of up to 25% for unreasonable failure to comply with the Code, pursuant to TULR(C)A 1992, s 207A.

"207A Effect of failure to comply with Code: adjustment of awards

(1)This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

(2)If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a)the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b)the employer has failed to comply with that Code in relation to that matter, and

(c)that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

69. The uplift applies to complaints listed in TULR(C)A Schedule A2. These include unfair dismissal, unlawful deductions from wages and breach of contract complaints.

70. In *Allma Construction Ltd v Laing* UKEATS/0041/11 (25 January 2012, unreported) Lady Smith suggested that a tribunal should approach an ACAS uplift in the following way: 'Does a relevant Code of Practice apply? Has the employer failed to comply with that Code in any respect? If so, in what respect? Do we consider that that failure was unreasonable? If so, why? Do we consider it just and equitable, in all the circumstances, to increase the claimant's award? Why is it just and equitable to do so? If we consider that the award ought to be increased, by how much ought it to be increased? Why do we consider that that increase is appropriate?' Similar guidance on structured decision-taking here was given by Judge Tayler in Rentplus UK Ltd v Coulson [2022] EAT 81, [2022] IRLR 664.

71. Guidance on quantifying an award was given by Griffiths J in Slade v Biggs [2022] IRLR 216, EAT, at [77] where it was suggested that the ET should pose the following questions:

"i) Is the case such as to make it just and equitable to award any ACAS uplift?

ii) If so, what does the ET consider a just and equitable percentage, not exceeding although possibly equalling, 25%?

Any uplift must reflect “all the circumstances”, including the seriousness and/or motivation for the breach, which the ET will be able to assess against the usual range of cases using its expertise and experience as a specialist tribunal. It is not necessary to apply, in addition to the question of seriousness, a test of exceptionality.

iii) Does the uplift overlap, or potentially overlap, with other general awards, such as injury to feelings; and, if so, what in the ET's judgment is the appropriate

adjustment, if any, to the percentage of those awards in order to avoid double-counting?

This question must and no doubt will be answered using the ET's common sense and good judgment having regard to the final outcome. It cannot, in the nature of things, be a mathematical exercise.

iv) Applying a final sense-check, is the sum of money represented by the application of the percentage uplift arrived at by the ET disproportionate in absolute terms and, if so, what further adjustment needs to be made?

Whilst wholly disproportionate sums must be scaled down, the statutory question is the percentage uplift which is “just and equitable in all the circumstances”, and those who pay large sums should not inevitably be given the benefit of a non-statutory ceiling which has no application to smaller claims. Nor should there be reference to past cases in order to identify some numerical threshold beyond which the percentage has to be further modified. That would cramp the broad discretion given to the ET, undesirably complicate assessment of what is “just and equitable” by reference to caselaw, and introduce a new element of capping into the statute which Parliament has not suggested."

72. The aim of the uplift is at least partly punitive, *Brown v Veolia ES (UK) Ltd* UKEAT/0041/20 (6 July 2021, unreported).

Law - Protected Disclosure Detriment

73. Protection from being subjected to a detriment is afforded by s47B ERA 1996, which provides:

"47B Protected disclosures
(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.

74. A "whistleblower" who has been subjected to a detriment by reason of having made protected disclosures may apply for compensation to an Employment Tribunal under *s48 ERA 1996.* On such a complaint, it is for the employer to show the ground upon which any act was done, *s48(2) ERA 1996.*

75. The term 'detriment has been explained by Lord Hope in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 at 34:“ .. [the] tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. …….. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment."

Protected Disclosure Detriment – Causation

76. In *Fecitt v NHS Manchester* [2012] ICR 372, the Court of Appeal held that the test of whether an employee has been subjected to a detriment on the ground that he had made a protected disclosure is satisfied if, "the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower." Per Elias J at para [45].

77. The making of a protected disclosure cannot shield an employee from disciplinary action, including dismissal, which is taken for reasons other than the fact that the employee has made a protected disclosure, *Bolton School v Evans* [2007] ICR 641.

78. Simler J, in Osipov v Timis UKEAT/0058/17/DA agreed with counsel for the appellant that the "proper approach" to inference drawing and the burden of proof in section 47B ERA cases is as follows [115]:

> "(a) the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.
>
> (b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them: see London Borough of Harrow v. Knight at paragraph 20.
>
> However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found."

Discussion and Decision

79. I took into account all my findings of fact, as well as the law, before coming to my decision. For clarity, I have expressed its decisions separately under individual issues.

Decision - Protected Disclosures

80. I decided, first, whether the claimant had made protected disclosures.

81. I decided that she had, in her Whatsapps of 29 November 2023 and 7 December 2023, which addressed the same issue. She disclosed information on 29 November 2023: "the temperature in the shop is getting very cold now with the weather outside. I have spoken to Elijah and he has let me know that we will not be getting a heater nor are we allowed to close the door. … it was very cold all day today and it's difficult to work like that. I was also wearing 3 layers and a thermal vest … The shop was at 12 degrees today."

82. All these statements by the Claimant provided information.

83. I accepted that the claimant reasonably believed that, taken together with her 7 December 2023, which concerned exactly the same issue, her disclosure of information showed that the health and safety of individuals had been, was being,

or was likely to be endangered. She specifically said, on 7 December 2023, in relation to the same matter, that, from a health and safety perspective, the working environment should be above 16 degrees.

84. I considered that the Claimant was reasonable in her belief that health and safety was being endangered, because she the working environment was 12C and she had read that the Health and Safety Executive advised that the working environment should be above this. It was reasonable for her to believe that the HSE give advice for the purposes of safeguarding health and safety, so that, breaching the advice would not safeguard health and safety,

85. I also decided that she reasonably believed that the disclosures were made in the public interest – they were made in Group chats to which other employees contributed and were in relation to the work environment for all employees. In those circumstances, they appeared to be for the benefit of all employees and not just the Claimant. Indeed, workplace health and safety is of public concern, as indicated by the Health and Safety Executive issuing advice on the issue.

86. I decided that both the Claimant's messages were made to her employer – directly to Ms Churchill on 29 November and then to her manager on 7 December 223. I found that the Claimant's 7 December 2023 statement had come to Ms Churchill's attention because, on that day, Ms Churchill WhatsApp'd the group, saying that a heater had been purchased. Ms Churchill specifically said that the staff were to ensure that it was not left on overnight – which appeared to be a reference to her earlier exchange with the claimant on 29 November 2023.

87. I noted that, while other employees raised issues of cold conditions, it appeared to be the Claimant's reference to health and safety which prompted the purchase of the heater.

Decision - Protected Disclosure Detriment

88. I decided that, after the Claimant made her protected disclosures, her employer's treatment of her changed.

89. Shortly afterwards, on 22 December 2023 the Claimant's line manager, Elijah, told the Claimant, "Alice is on her last straws with you." The Claimant had only been 5 minutes late to work that day, when other staff were frequently late.

90. Two days later, on Christmas Eve, when the Claimant asked Elijah if other staff, like Rishi, were also being warned. he said, "Well, he's 16, and it's not just the lateness, it's other things … . "there are other issues too."

91. Following this, the Claimant's hours were reduced, when other employees' hours were increased and more employees were recruited.

92. Also a short time later, the Claimant was invited to a disciplinary meeting on 10 January 2024, when she was upbraided for lateness, a messy stockroom, for criticising the company owners at the Christmas party and was told she required training. This was clearly a disciplinary meeting, as the Claimant was criticised for

her work performance and/or conduct. The Respondent itself contended that the meeting was to address conduct, p54.

93. On the evidence, other members of staff were late on a regular basis and were not subjected to disciplinary meetings. I accepted the Claimant's evidence that she never opened the café itself late, so that her lateness had little or no impact on customers.

94. A delivery on 14 December 2023 was received by a neighbouring shop owner, I accepted the Claimant's evidence that she had not been told about the delivery.

95. The Claimant was not given training and she was never told any detail of what she was supposed to have said at the Christmas party.

96. I decided that the disciplinary hearing was a detriment, in that a reasonable employee would consider themselves disadvantaged by being given a warning about their conduct. A warning can be relied upon later to justify dismissal and can therefore be sign that future employment is at risk.

97. Given the proximity in time between the protected disclosures and the disciplinary meeting, and the apparently disparate treatment of the Claimant's lateness compared to other staff lateness, the burden of proof shifted to Respondent to show protected disclosure was not part of reason for the disciplinary hearing.

98. The Respondent did not give evidence.

99. I did not accept that the reasons given at the meeting were the true reasons for holding the 10 January 2024 disciplinary meeting. Other employees were late on regular basis, but it appeared that the Claimant was singled out for criticism. The fact that no training was provided, nor any details of the Claimant's alleged inappropriate comments, also indicated that the criticisms of her were not valid.

Decision - Automatic Unfair Dismissal

100. I took into account that it was for the Claimant to prove that the reason/principal reason for her dismissal is that she made a protected disclosure.

101. I found that the Claimant's dismissal was not because of lateness, or inappropriate attitudes to colleagues, or performance, as the Respondent's dismissal letter stated, or the Respondent contended in documents before the Tribunal.

102. The Respondent set out its reasons for dismissal in its written response to the Claimant's ET1, pp53 – 54. These included lateness, attitude to Elijah and the owners and performance. However, the instances of lateness were historic (the most recent appeared to be on 9 February 2024) and intermittent. One instance was very old – on 29 May 2023 and there was no suggestion that it had been acted on at the time.

103. Further, the WhatsApp messages appeared to show that the Claimant had a good relationship with her colleagues, including her manager. The only incidence of the

Claimant allegedly disparaging the owners was at the Christmas party, several months previously, and for which no details were provided. The supposed examples of the Claimant's poor performance related to July and September 2023.

104. I concluded that these were not the real reasons for dismissal. The Respondent did not attend to be cross examined and the reasons appeared to be scant and unconvincing.

105. In reality, I decided that the Claimant had proven, on all the facts, that what had changed in the relationship between the Claimant and the Respondent was the Claimant's protected disclosures in November and December 2023. The working relationship changed from that time, with the Claimant being told she was on her "last straws" with Alice and being given fewer hours.

106. On the evidence, there was nothing in particular which had provoked the dismissal in April. On the balance of probabilities, I found that the protected disclosures changed the working relationship, led to the Claimant being disciplined on 10 January 2024 and being given fewer hours and, ultimately, to the Claimant being dismissed in April. Her dismissal was the culmination of the detrimental treatment after her protected disclosures.

Decision - Mitigation of Loss

107. I accepted that the Claimant had taken reasonable efforts to mitigate loss. She provided a detailed list of the applications she had made, p207. I found that she had made 38 job applications in the period April 2024 – May 2025. I accepted the Claimant's evidence that her job search was somewhat hampered by the fact that she is a single parent who needed similar part time work to the work she had undertaken at the Respondent. Her child requires additional help and support. I noted that the Claimant had managed to reduce her loss to some extent, in that she obtained some very short term work in both July and December 2024, p208-209.

108. The Respondent had not shown that the Claimant would have obtained any particular alternative work, if she had taken reasonable steps to mitigate her loss.

Decision - Notice Pay

109. The Respondent did not pay the Claimant any notice pay. Under her contract, she was entitled to 4 weeks notice: "reasonable and sufficient notice of termination of employment by the Employer is the greater of four weeks or any minimum notice required by law."

Decision - Wrongful Dismissal

110. I concluded that the Claimant had not committed a repudiatory breach of contract, justifying the Respondent in summarily dismissing her. The Claimant had not acted in such a way as to so undermine the trust and confidence which was

inherent in her particular contract of employment that the employer was no longer be required to retain her in employment.

111. I did not accept that the Respondent had dismissed the Claimant for the reasons it gave. The true reason for dismissal was that the claimant had made protected disclosures. The Respondent wrongfully dismissed the Claimant.

Decision – Breach of Contract, Unlawful Deductions from Wages and Failure to Pay Holiday Pay

112. On the facts, the Respondent made unlawful deductions from the Claimant's wages when it failed to pay her for the work she did in April 2024. It also failed to pay her for any accrued holiday in the holiday year 2024, at the termination of her employment.

113. In breach of contract clause 14, the Respondent also failed to enroll the Claimant in a NEST pension scheme and so did not pay the Claimant's NEST pension payments, after her probationary period, in August, September and October 2023.

No Reinstatement or Re engagement

114. I did not order reinstatement or reengagement for unfair dismissal because the Respondent is entering insolvency and it would not be practicable for the Claimant to be reinstated or reengaged when the Respondent is not trading.

ACAS Uplift

115. I have found that the Respondent automatically unfairly dismissed the Claimant.

116. There was no evidence that the Respondent complied with paragraph 9 of the ACAS Code of Practice 1 – "9. If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification."

117. The Respondent then dismissed the Claimant without notice and failed to pay her outstanding entitlements to wages and holiday pay.

118. I considered that the Code of Practice 1 applied to the dismissal and the money claims associated with the dismissal.

119. There was a failure to comply with paragraph 9 of the CoP. In the absence of any explanation, I found it was unreasonable. The automatically unfair dismissal was unreasonable in any event – I rejected the Respondent's argument that they had reasonable grounds for dismissal.

120. However, the Respondent did not breach the Code in other ways – it did attempt to have a meeting with the Claimant before her dismissal and it did give written reasons for the dismissal.

121. This was not a case of a wholesale disregard of the Code of Practice. The Respondent also appeared to be a small employer.

122. It was appropriate to make an ACAS Uplift, but at the lower end of the possible uplifts. I awarded a 10% uplift on the unfair dismissal, notice pay, unlawful deductions from wages and holiday pay claims.

Calculation of Remedy

123. There was no time to give judgment on calculation of remedy in the claim. I reserved that judgment, to be sent out to the parties in writing.

Employment Judge Brown

28 July 2025

Sent to the parties on:

12 August 2025
…….
For the Tribunal Office:

……..……