



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000215/2023

Held in Edinburgh on 21, 22, 23 January and 8, 9, 10 April 2025

**Employment Judge S Cowen
Members Mr R Henderson
Mrs L Grime**

Mr J Harkins

**Claimant
In person**

McQueens Dairies Limited

**Respondent
Represented by
Ms Gorry (Solicitor)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claims for breach of contract/failure to provide notice pay succeeds and the respondent shall pay the claimant £484.92 gross.
2. The following claims were brought out of time:
 - 2.1. S.13 ERA – unlawful deduction from wages;
 - 2.2. S.57A ERA – discipline for taking time off for dependents;
 - 2.3. Reg 15 WTR- rejecting holiday request.
3. The claims for automatic unfair dismissal, s.80 ERA, Reg 14 WTR, and s.1ERA are dismissed.

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REASONS

Introduction

1. The parties each produced a bundle of productions as they were unable to agree. The claimant found it particularly overwhelming to deal with the documents in the case.
2. The first day was spent identifying the list of issues which was agreed by the parties and sent to parties by the Tribunal.
3. On the second day of the hearing the claimant made an application to postpone the hearing as he was feeling overwhelmed and did not consider that he could continue. After discussing his concerns with the Tribunal and a break, the claimant indicated that he felt well enough to continue, knowing that he could have breaks in the proceedings when he needed them.
4. The claimant gave his evidence and was cross examined. Unfortunately, the three day listing did not provide sufficient time to hear the respondent's evidence and therefore the case was continued to be heard on 8,9,10 April 2025.
5. At the continued hearing, unredacted copies of documents in the bundle were provided, as well as full email trails of selected emails in the bundle. The respondent's witnesses gave their evidence and were cross examined. Both parties provided written submissions and were given the opportunity to address the Tribunal in closing.

The Issues

6. The following list of issues was agreed by the parties and considered by the Tribunal;
 1. Was the claimant automatically unfairly dismissed for a reason/ principal reason related to parental leave, contrary to s.99 Employment Rights Act 1996?
 2. Did the respondent fail to pay the claimant his notice pay entitlement and was this a breach of contract?
 3. Did the respondent unlawfully deduct pay from the claimant, contrary to s.13 Employment Rights Act 1996?
 4. Did the respondent refuse to allow/prevent the claimant from exercising his right to paternity leave, contrary to s.80

Employment Rights Act 1996?

5. A) Did the respondent discipline the claimant for taking time off on 2,3,9, 11 August 2021, contrary to s.57A Employment Rights Act 1996?

B) Did the respondent fail to allow the claimant compassionate leave in relation to the death of his grandfather and his partner's miscarriage, contrary to s.57A Employment Rights Act 1996?
6. Did the respondent reject the claimant's holiday request in January 2023 and is this a breach of Regulation 15 Working Time Regulations 1998?
7. Did the respondent fail to pay the claimant for accrued, but untaken holiday at the time of his dismissal, contrary to Regulation 14 Working Time Regulations 1998?
8. Did the respondent provide to the claimant a notice under s.1 Employment Rights Act 1996?

The facts

7. Having considered all the evidence, we find the following facts on a balance of probabilities.
8. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.
9. The claimant started to work for the respondent, a domestic milk delivery company, as a delivery driver, on 14 April 2021. The claimant had a false start with the respondent, as he was ill at the start of his employment. However, his period of continuous employment started on 14 April 2021.
10. He signed a contract of employment, which included all the relevant statutory details about his employment on 19 April 2021.
11. The claimant was told that he would receive an increment to his salary after 6 weeks and 12 weeks of continuous employment.
12. After approximately 6 weeks employment the claimant was offered a promotion to team leader. The condition for this position was that the

claimant had to learn three rounds, allocated to other drivers, in order that he could become their team leader. The increase in salary associated with this position would be paid when the claimant learned the rounds. The expectation was that it would take him a week to learn each of the rounds. Unfortunately, due to a shortage of staff elsewhere the claimant was not able to take the time to learn the other rounds. He asked the depot manager Mr Robert Bruce to pay him the increased salary for a team leader in any event, as he was carrying out all other aspects of the role. Mr Bruce agreed and the claimant's salary was adjusted and backdated.

13. When the claimant was promoted to team leader he was provided with a new job description which also provided a revision of his pay entitlement. All other contractual entitlements remained the same. He signed this document, to amend his current contract. Neither the claimant nor the respondent retained a copy of this document.
14. The respondent's holiday year ran from 1 January to 31 December. The claimant and others worked 4 nights per week (Sunday, Monday, Wednesday and Thursday). He was entitled to 23 days holiday per year. His contract indicated that he had to use some of his holiday days for the closure of the business over Christmas and New Year. Under clause 5.5 he had to ensure that he had sufficient holidays left to cover this period. Two of these days could be 1 and 2 January (depending on whether they fell on working days), which would be taken from the relevant 'new' year's holiday entitlement. This was not made clear to the claimant in the year he first joined the respondent.
15. The claimant's contract indicated that he should provide 6 weeks' notice of any holiday he wished to take. This policy was not strictly adhered to by the depot manager.
16. Staff were not provided with a copy of a handbook, or access to an intranet. Instead, they had to ask their manager for access to any policy. The managers did not have direct access to company policies, but had to request copies from the HR department, located in Glasgow. Managers did not receive detailed training in these policies. Policies on compassionate and dependents leave were available to HR, but not widely disseminated to staff. There was an Absence Management Policy, but no written Absent Without Leave Policy.
17. The claimant encountered problems with his manager in August 2021 when he took time off to assist his family as his grandfather was moved to hospice care. The claimant was unclear about whether the respondent treated this

as holiday, or some other type of leave. Likewise, when his grandfather passed away and the claimant took time off for the funeral, it was unclear what type of leave was being granted. A return- to-work meeting was held on 15 August 2021 for compassionate leave, where it was decided that there was no cause for concern and no follow up required. The claimant felt that this still amounted to a punishment for absence. Both Mr Robertson and Ms Burnett said that it would not have been appropriate to include absence for dependent or compassionate leave in an absence management process.

18. Shortly after this the claimant suffered further trauma when his wife suffered a miscarriage. The claimant took some time off, but considered that his manager did not treat him appropriately, as no welfare meeting was conducted.
19. In August 2022 there was an absence management review meeting at which the claimant was given a written warning that would remain on his file for 6 months.
20. In November 2022 the claimant told Mr Bruce, during a conversation in the yard, that his partner was pregnant. He told Mr Bruce of a due date around late January 2023. They discussed how the claimant could take time off at the time of the birth. Mr Bruce offered that, in order that the claimant could maintain full pay, he could take time off as holiday, rather than paternity leave, which would be paid at the Statutory Paternity Pay rates. The two men agreed that this was what the claimant would do, when the time arose.
21. Mr Bruce did not notify HR of the claimant's impending paternity leave period/holiday. Nor did he input anything on the calendar in TeamSeer, the HR computer system. He did however, tell Mr John Young, the deputy depot manager, as he shared all relevant work-related information with him.
22. During November 2022 the claimant's partner was admitted to hospital. This led to difficulties for the claimant to attend work, as he had to take care of his other children. It also led to the claimant becoming very anxious and worried about his partner and their babies' welfare. The claimant was not offered emergency leave at this time, but chose the use of his holiday entitlement.
23. The claimant was told that there was a company handbook, but was never provided with a copy. When he asked Mr Bruce for a copy, his reply was that he would like to see it too.

24. During December 2022 the claimant was ill with Covid. Over the Christmas period 2022, the claimant was also unwell. However, this was at a time when he was on holiday. On 4 January 2023, the claimant told Mr Bruce that he was ill, but wanted to take holiday as he did not want to have further sickness on his record. On 8 January 2023, the claimant once again reported as sick, but asked for it to be recorded as holiday. Mr Bruce did so, recording holiday on 8/9 January and 11/12 January 2023.
25. On 15 January the claimant texted Mr Bruce and asked if he could take holiday for the rest of the month and then unpaid leave when the baby was born. Mr Bruce declined this holiday request saying that the only days he could take were 15/16 and 18/19 January. The claimant admitted that he had taken 8 days of holiday in January 2023.
26. The claimant indicated on 18 January that he hoped to return on 22 January, but texted that day, to say that he was not recovered and could not attend work.
27. On 23 January the claimant told Mr Bruce that he had seen his GP and had been 'signed off' for the rest of the week, but had not yet collected the certificate. The certificate covered the period 22 – 29 January 2023.
28. Before the claimant had the chance to provide the certificate to the respondent, his wife gave birth to their baby (27 January 2023). The claimant spoke to Mr Bruce on 1 February to discuss his paternity leave and was told that it would not be possible to start that leave immediately. Following on from this, on 3 February, the claimant texted Mr Bruce to confirm his understanding of the leave position, with regard to the use of holiday, sickness and paternity leave. Mr Bruce's reply indicated that the claimant had failed to use the appropriate process to apply for paternity leave and therefore he had agreed that the claimant could use holiday instead. However, as the Claimant had then used holiday to cover his sickness in January, he had insufficient holiday left to cover the paternity leave. A call on 6 January was suggested to discuss this.
29. On 5 February, John Young, deputy manager wrote to HR and the owner of the dairy to say that the claimant had been absent "and now claims to be on paternity leave. We have no written documentation for this request, has John dealt directly with HR with regards to this matter".
30. On 6 February the claimant was sent a Statutory Paternity Pay form to complete. He did so indicating that the paternity leave was to start on 29

January for 2 weeks (up to 11 February).

31. The claimant tried to call Mr Bruce, as arranged, on 6 February, but Mr Bruce was not available to speak.
32. The claimant was due to return to work on Sunday 12 February. He failed to attend work that evening and did not notify his manager of his absence. Mr Bruce sent the claimant an email at 23.12 that evening asking the claimant to contact him, or HR as soon as possible to discuss his absence. The claimant did not respond to this email.
33. The following day, 13 February, Stewart Robertson, HR assistant, sent the claimant an AWOL letter, asking him to contact the company by close of business on 14 February, or he would be assumed to have resigned his employment, from the date that he last completed a shift.
34. The claimant did not attend for work on the evening of 13 February, nor did he contact the depot.
35. On 14 February, within the deadline set by Mr Robertson, the claimant sent an email indicating that he was not resigning and that he was not on best terms with his manager, that he was experiencing anxiety and had a mental health problem. But the claimant indicated that it was his desire to return to work. Mr Robertson replied the same day saying that Mr Bruce would make contact with the claimant. The claimant awaited that contact, but it did not occur.
36. Mr Robertson referred the claimant's email to Alison Burnett, a senior HR manager. Ms Burnett tried to call the claimant on 15 and 16 February 2023. The records show that she tried on 3 occasions within one minute on each day.
37. On 16 February at 13.43 Ms Burnett wrote to the claimant to say that both she and Mr Bruce had attempted to call him and that he is now presumed to have resigned and he will receive his P45 and his final pay. Mr Robertson also wrote to Mr Bruce at 14.02 to say that they had decided to process the claimant as a leaver.
38. At 15.54 the claimant replied to Ms Burnett saying that he would like to meet with HR about his problems.
39. At 16.08 Ms Burnett replied to the claimant saying that the claimant had cancelled a meeting with Mr Bruce (this was erroneous) and told him to

contact Mr Bruce.

40. Within minutes, the claimant had contacted payroll to complain that he did not want to be treated as a leaver. HR then asked Ms Burnett to try to call the claimant, which she did at 16.53, but he did not answer.
41. The same day, Mr Bruce emailed the claimant to say that he should go to the depot to speak to him at 11pm. He followed this up with a text message. The claimant replied that evening to say that he could not go to the depot, but would call. Mr Bruce said he would rather see him.
42. The claimant emailed Mr Bruce at 23.16 the same day saying that he cannot attend to speak to him that night and asked Mr Bruce what he should do. The correspondence ceased at this point.
43. The claimant was issued that day with a P45 which stated that his last shift was 9 February. This was during the claimant's paternity leave and therefore cannot be the correct date.

THE LAW

44. Automatic Unfair Dismissal s.99 Employment Rights Act 1996.
“(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—
(a) the reason or principal reason for the dismissal is of a prescribed kind, or
(b) the dismissal takes place in prescribed circumstances.

(2) In this section “prescribed” means prescribed by regulations made by the Secretary of State.

(3) A reason or set of circumstances prescribed under this section must relate to—
..... (ca) paternity leave.”
45. The Tribunal must consider what the reason or principal reason was for the dismissal. To be a reason it must be a material factor, i.e more than trivial in the decision making of the dismissing officer.

Notice pay

46. Where a contract sets out the notice period to be given by the company, a breach of contract occurs where the employer fails to provide that notice, where the dismissal occurs for reasons other than the employee's breach of

contract.

Unlawful deduction from wages – s.13 ERA

47. “(1) An employer shall not make a deduction from wages of a worker employed by him unless—
- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.”
48. The Tribunal must consider the terms of the contract with regard to payment, in order to consider whether the claimant was entitled to the wages, and then to consider whether they were unlawfully deducted.

S.76 ERA Entitlement to parental leave

49. “(1) The Secretary of State shall make regulations entitling an employee who satisfies specified conditions—
- (a) as to duration of employment, and
 - (b) as to having, or expecting to have, responsibility for a child, to be absent from work on parental leave for the purpose of caring for a child.”

S.77 ERA Rights during and after parental leave

50. “(1) Regulations under section 76 shall provide—
- (a) that an employee who is absent on parental leave is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,
 - (b) that an employee who is absent on parental leave is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with section 76(1)), and
 - (c) that an employee who is absent on parental leave is entitled, subject to section 78(1), to return from leave to a job of such kind as the regulations may specify.”

S. 80 ERA Complaint to employment tribunal.

51. “(1) An employee may present a complaint to an Employment Tribunal that his employer—

- (a) has unreasonably postponed a period of parental leave requested by the employee, or
- (b) has prevented or attempted to prevent the employee from taking parental leave.”

52. The Tribunal must consider whether the claimant was denied the opportunity to exercise his right to requested parental leave and the right to return to a position of equivalence.

S.57A ERA – time off for dependents

53. “(1) An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee’s working hours in order to take action which is necessary—
- (a) to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted,
 - (b) to make arrangements for the provision of care for a dependant who is ill or injured,
 - (c) in consequence of the death of a dependant,
 - (d) because of the unexpected disruption or termination of arrangements for the care of a dependant, or
 - (e) to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for him.”
54. The issue is whether the claimant was subject to a disciplinary process due to taking time off for a dependent, for a reason set out in the statute. The Tribunal must consider the reason for the disciplinary and the knowledge of the respondent at the time. Issues as to the reasonableness and necessity of the time off are taken into consideration.

Reg 14 Working Time Regulations 1998

Compensation related to entitlement to leave

55. “(1) Paragraphs (1) to (4) of this regulation apply where—
- (a) a worker’s employment is terminated during the course of his leave year, and
 - (b) on the date on which the termination takes effect (“the termination date”), the proportion he has taken of the leave to which he is entitled in the

leave year under regulations 13(1) and 13A(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).”

56. This provision applies where there is termination of the contract occurs and the claimant has holiday which has accrued as owed, but untaken, he is entitled to payment in lieu of that holiday.
57. There is no provision in the regulation which allows for the employee to take more holiday than he has accrued.

Reg 15 Working Time Regulations 1998

Dates on which leave is taken

58. “15.— (1) A worker may take leave to which he is entitled under regulations 13, 13A and 15B on such days as he may elect by giving notice to his employer in accordance with paragraph (3), subject to any requirement imposed on him by his employer under paragraph (2).
- (2) A worker’s employer may require the worker—
- (a) to take leave to which the worker is entitled under regulation 13, 13A or 15]; or
- (b) not to take such leave on particular days, by giving notice to the worker in accordance with paragraph (3).
- (3) A notice under paragraph (1) or (2)—
- (a) may relate to all or part of the leave to which a worker is entitled in a leave year;
- (b) shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and
- (c) shall be given to the employer or, as the case may be, the worker before the relevant date.
- (4) The relevant date, for the purposes of paragraph (3), is the date—
- (a) in the case of a notice under paragraph (1) or (2)(a), twice as many days in advance of the earliest day specified in the notice as the number of days or part-days to which the notice relates, and
- (b) in the case of a notice under paragraph (2)(b), as many days in advance of the earliest day so specified as the number of days or part-days to which the notice relates.”

59. The issue for the Tribunal is whether the reason for denying the claimant's holiday request was valid and within the bounds of the Regulations.

S.1 ERA Statement of initial employment particulars.

60. "(1) Where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment."
61. The details of which terms must be provided are set out in s.1. A failure to do so at the time the claim is issued can result in compensation of up to 4 weeks' pay being awarded.

DECISION

Automatic unfair dismissal

62. The respondent admitted that the claimant was dismissed but stated that the reason for dismissal was due to the claimant being absent without leave.
63. The claimant asserted that his dismissal was related to having taken paternity leave and that the respondent had backdated his dismissal to the time during his paternity leave.
64. The Tribunal took account of the Statutory Paternity Pay form which indicated the dates of paternity leave; it stated 29 January 2023 for two weeks, ie up to and including 11 February 2023. The claimant was therefore due to return to work on Sunday 12 February. He failed to do so and failed to notify his manager of his absence.
65. On 13 February Mr Robertson sent the AWOL letter asking the claimant to contact them by close of business on 14 February, or he would be taken to have resigned. The letter indicated that they assumed he had resigned from the date of the last shift attended (which would have been 9 February if he was not on paternity leave).
66. The Tribunal accepted that on 14 February and within the deadline set by Mr Robertson, the claimant sent an email, indicating that he was not resigning and that he was not on best terms with his manager, experiencing anxiety and a mental health problem, but indicating his desire to return to work. The reply to this from the respondent was that Mr Bruce would contact the claimant. This was the person the claimant had said he was having difficulty with. There was no evidence before the Tribunal that

indicated that Mr Bruce tried to make such a call to the claimant.

67. Ms Burnett was contacted, as a more senior HR person. She tried to call the claimant on 15 April and 16 April. The Tribunal did not accept that Ms Burnett made numerous attempts each day to call the claimant. Her calls were closely timed, showing that she tried two or three times in the space of three minutes. The Tribunal took these to amount to one attempt each day.
68. On 16 February at 13.43 Ms Burnett wrote to the claimant to say that she and Mr Bruce had tried to call him. She told the claimant that he was now presumed to have resigned and he will receive his P45 and final pay, thereby dismissing him.
69. Shortly after this Ms Burnett indicated to payroll that she had taken the decision to process the claimant as a leaver on the basis that she had not had contact with him.
70. However, at 15.54 the claimant wrote to Ms Burnett saying that he would like to meet with HR about his problems.
71. Ms Burnett's final email at 16.08 said that both she and Mr Bruce had tried to contact him. The Tribunal found this to be untrue of Mr Bruce and limited on the part of Ms Burnett. She also said that the claimant had cancelled a meeting with Mr Bruce, this too was untrue. Finally, she told the claimant to contact Mr Bruce.
72. There was contact between Mr Bruce and the claimant that day, where it was suggested that they meet that evening at the depot, but this did not occur.
73. The Tribunal accepted that the confusion around the paternity leave/holiday position made the claimant lose trust in Mr Bruce. However, the claimant failed to engage in discussion around his time off and the nature of that time.
74. The claimant was also aware that he had had warning about time off and was worried that further absence would lead to further disciplinary action/dismissal.
75. Whilst on paternity leave on 6 February Mr Bruce had asked the claimant to attend for a welfare meeting. The claimant was concerned about this, as he thought it would mark the start of a disciplinary action and so had not engaged.

76. The Tribunal found that neither of these concerns were linked to the claimant taking paternity leave. They arose from his illness and his use of a significant amount of his annual holiday entitlement within the first month of the holiday year.
77. The Tribunal considered the fact that the respondent's letter and P45 state that the claimant's last shift was 9 February. Whilst this was during the claimant's paternity leave, it did not mean that his dismissal was due to a reason connected to paternity leave. The Tribunal were satisfied that the reason for dismissal was because the claimant didn't attend work after the end of his paternity leave.
78. The Tribunal concluded that the claim for automatically unfair dismissal was therefore dismissed.

Notice pay

79. The claimant was dismissed for his failure to attend work. The respondent failed to engage in a disciplinary process with the claimant, but instead summarily dismissed him on 16 February 2023.
80. The Tribunal saw no evidence of a disciplinary process in relation to the non-attendance. The letter merely stated that the claimant had been treated as a leaver, unless he could assert otherwise. Even when the claimant sought to do so, this was not accepted. This did not amount to an ACAS compliant process.
81. The respondent failed to prove to the Tribunal that the claimant would have been dismissed for gross misconduct in any event. There was no evidence on which to base such a submission.
82. The Tribunal noted that the contract stated that the respondent should pay notice. The Tribunal concluded that the failure to pay such notice amounted to a breach of contract. The claimant was entitled to one week of gross wages, £484.92.

Unlawful deduction

83. In relation to the Team Leader pay – the Tribunal found that the claimant was promoted to this position on 10 May 2021. The pay rise associated with this post was conditional upon the employee learning three other rounds.

The claimant did not do so, due to the respondent's requests for him to carry out other work. The claimant did however carry out the other team leader duties. When the claimant complained that he was not being paid team leader rates, this was considered by the respondent, who rectified the position, even though the claimant had not met the criteria.

84. The claimant asserted that he was entitled to pay rises after 6 and 12 weeks. There is some evidence in the bundle to show that pay rises did occur.
85. The claimant did not satisfy the Tribunal that he was entitled to pay as a team leader from 27 May 2021. Nor did he show that this was not paid to him. The Tribunal therefore did not find that the claimant proved that money was due to him, or that he was not paid any relevant sum.
86. The Tribunal also considered that this claim was issued beyond the time limit. The claim ought to have been brought within 3 months of the date of the deduction. The claimant did not provide any evidence or explanation as to why it was not reasonably practicable for him to have brought the claim to the Tribunal at that time. The Tribunal therefore had no jurisdiction to hear this claim.
87. The claimant said that the respondent should not have deducted the overused holiday from his final pay. However, the claimant admitted that he had taken 8 days of holiday in January 2023, when in fact he had only accrued 3 days by the time of his dismissal. The claimant's contract of employment at clause 5.8 allows the respondent to recoup any overtaken holiday per day from final salary.
88. The respondent's position was that they did not deduct as much as they should have done as the claimant owed them more, but they worked it back to be a figure of nil. The Tribunal accept that the deduction should have been more, but that the respondent has not made an employer's breach of contract claim.
89. The Tribunal concluded that this was a lawful deduction in accordance with the signed contract and the allegation is dismissed.

Exercise of paternity leave

90. The Tribunal considered the evidence of both the claimant and Mr Bruce with regard to the conversation about the use of paternity leave or holiday. The Tribunal concluded that the managers who were responsible for

administering the relevant policies seemed not to have been trained at the time or have local access to the policies.

91. The Tribunal were satisfied that due to a conversation with Mr Bruce, the claimant had not been informed that he needed to provide certain information and therefore had not complied with the requirements to notify of intended paternity leave in writing and by providing a MATB1, as was required by the respondent. The Tribunal were also clear that Mr Bruce did not inform HR about his agreement with the claimant in November 2022. However, the Tribunal recognised that the respondent did not prevent the claimant from taking paternity leave, even though he had not met the criteria.
92. The Tribunal took into account the fact that when HR found out about the birth of the baby, they allowed the forms to be completed retrospectively and allowed the claimant to take paternity leave, as requested.
93. The Tribunal accepted that the claimant acknowledged that he took two weeks of paternity leave in the period 29 January to 11 February 2023.
94. The Tribunal therefore found as a fact that the claimant did take paternity and was not prevented from doing so.
95. This claim therefore was dismissed.

Discipline for taking time off for dependents and/or compassionate leave

96. The claimant was absent on 2,3,9,11 August 2021. He took this time off due to the hospitalisation of his partner and the terminal illness of his grandfather. They were authorised by Mr Bruce as compassionate leave.
97. The claimant had a return to work meeting on 15 August 2021 at which it was noted that there was no cause for concern and no follow up required. It was not until March 2022 that the claimant was called to an absence management review meeting which listed as one of the occasions being considered, the absence up to 15 August 2021 for compassionate leave. This meeting had the potential to provide the claimant with a sanction and therefore was correctly interpreted by the claimant to be a form of disciplinary procedure.
98. Whilst no further action was taken as a result of this review meeting, the Tribunal accepted the claimant's evidence was that he did not think he should have been taken to this meeting at all. Further, that it made him feel

that he was being punished for his absence.

99. The Tribunal also noted that the respondent's witnesses stated that they did not consider that it was appropriate to include in absence management any absence due to dependent or compassionate leave. The Tribunal therefore concluded that taking the claimant to an absence management meeting was a detriment to the claimant, who felt anxious and felt that he was being punished for his absence.
100. However, the Tribunal also considered the time limit for bringing such a claim. This claim ought to have been brought within 3 months of the actions taken by the respondent. The claimant provided no evidence of why it was not reasonably practicable for him to have brought the claim within the time limit. The Tribunal could not be satisfied that it had not been reasonably practicable to have brought the claim and therefore concluded that they had no jurisdiction to consider it.

Did the respondent fail to allow the claimant compassionate leave in relation to the death of his grandfather and his partner's miscarriage, contrary to s.57A Employment Rights Act 1996?

101. The evidence of all parties was that the claimant was allowed to take time off for these two events. There was no evidence to suggest that the claimant was in fact prevented from taking time off. The Tribunal found that this allegation was not proved and therefore dismissed.
102. The Tribunal noted in any event that s.57A would cover the right to time off for the claimant's partner's miscarriage, where he was dealing with an 'emergency situation'. However, the claimant's relationship with his grandfather is not covered by s.57A. The Tribunal noted that he was allowed the time off as compassionate leave, in any event. Therefore, there was no breach of s.57A.
103. In relation to absence management review meeting held in August 2022, whilst it was contained in the ET1, it was not within the list of issues and therefore the Tribunal provided a view on this for completeness only. The Tribunal noted that the invitation to this meeting contained reference to 2 occasions of dependent's leave. The respondent's witnesses admitted that it was inappropriate to convene an absence review meeting on that basis. The outcome letter dated 16 August said that the claimant was given a written warning to remain on his file for 6 months.

104. The Tribunal were concerned to see that once again the respondent's processes included reliance on absences which ought not to have been the subject of a management process. However, this claim was also brought out of time, and therefore the Tribunal could not have found in favour of the claimant, in any event.

Did the respondent reject the claimant's holiday request in January 2023 and is this a breach of Regulation 15 Working Time Regulations 1998?

105. The Tribunal noted that the claimant's absences on 1,2,4,5,8,9,11,12 January 2023 were all accommodated. When the claimant requested holiday on 15,16,18, 19 January, this was declined.
106. The Tribunal accepted that the respondent did reject the holiday request of the claimant who wanted to take holiday rather than paternity or sick leave, in order to maintain full pay.
107. The Tribunal noted that in November 2022 when the claimant and Mr Bruce had discussed his paternity leave, Mr Bruce had suggested that paternity leave could be covered as holiday in order to maintain the claimant's full pay. This was an agreement in principle, as no specific dates were discussed or agreed. However, due to the fact that the claimant took 8 days of holiday in January prior to his paternity leave, in order to avoid being classed as having further sickness absence, by the time the claimant came to require paternity leave, he had already used more holiday than he had accrued.
108. The Tribunal were satisfied this lack of accrued holiday was the reason why his holiday request was denied. This, however, was not clear to the claimant at the time.
109. The Tribunal considered whether this amounted to breach of the Working Time Regulations. The Tribunal accepted that the claimant was supposed to give notice to take holiday and the respondent was supposed to give notice to refuse it. Neither party complied with the statutory minimum requirement, nor with the contractual notice period.
110. The Tribunal found on balance that it was reasonable for the respondent to refuse further holiday where the claimant had exceeded his accrued holiday at that time. Mr Bruce had not explained to the claimant in detail that he needed to ensure that he had sufficient holiday entitlement to take his paternity leave as holiday. Nor did he warn the claimant when he asked for

holiday to cover his sickness period, that this would leave him with an insufficient amount of holiday to take as paternity leave. However, that failing on the part of Mr Bruce does not amount to a breach of the Working Time Regulations. The Tribunal therefore would have dismissed this allegation.

111. The Tribunal also considered that this allegation was out of time. As the leave would have started on 15 January 2023, taking into account the EC extension (3 days), the claim ought to have been brought by 17 April. It was not brought until 10 May. The claimant provided no explanation of why it was not reasonably practicable to have brought the claim in time and therefore the Tribunal concluded that it had no jurisdiction to hear the allegation.

Did the respondent fail to pay the claimant for accrued, but untaken holiday at the time of his dismissal, contrary to Regulation 14 Working Time Regulations 1998?

112. The Tribunal found that the claimant had taken more holiday than he had accrued at the time of his dismissal and therefore no holiday pay was owed to him.

Did the respondent provide to the claimant a notice under s.1 Employment Rights Act 1996?

113. The claimant showed the Tribunal a contract which was signed by him. This includes all the relevant information required under s1. The Tribunal concluded that this claim therefore fails.
114. The Tribunal also noted that the ET1 says he was asked to sign a document which was a description for the job and pay as a team leader. By the claimant's own admission this document did exist and the claimant did sign it. The Tribunal noted that neither party had provided a copy to the Tribunal. It was concluded that as the rest of the claimant's terms remained unaltered, there would be no need to re-issue the whole contract.

115. The Tribunal were satisfied that the claimant's own evidence showed that he did receive the variation and that he accepted it. The Tribunal concluded there was no breach of s.1 ERA.

**Approved by:
Employment Judge Cowen**

On 16 July 2025

Date sent to parties

4th August 2025
