



EMPLOYMENT TRIBUNALS

Claimant: Ryan Shearwood
Respondent: London Fire Commissioner

Heard at: London South

On: 15th and 16th May 2025, and 15th and 16th July 2025

Before: Employment Judge Tueje

REPRESENTATION:

Claimant: In person
Respondent: Mr B Amunwa (counsel)

JUDGMENT

1. At the hearing on 16th July 2025 the Tribunal announced orally the following judgment:
 - 1.1 The complaint of unfair dismissal is well-founded. Mr Shearwood was unfairly dismissed.
 - 1.2 The complaint in respect of holiday pay is not well-founded, and is dismissed.
2. The remedy hearing is listed on 23rd and 24th October 2025.
3. The respondent requested written reasons under Rule 60 of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided.

REASONS

Introduction

4. Mr Shearwood was employed by the respondent as a hydrant technician from 5th August 2019, until he was summarily dismissed for gross

misconduct on 18th April 2023 following an incident that took place on 10th October 2022.

5. The respondent upheld Mr Shearwood's dismissal on appeal. The appeal decision was sent to him by an e-mail sent on 13th June 2023, and in a letter dated 20th June 2025, reasons were also sent on 20th June 2025.
6. Early conciliation began on 14th June 2023, and ended on 26th July 2023. The claim was presented on 8th August 2023. The respondent submitted its ET3 Grounds of Resistance on 18th September 2023.
7. At a preliminary hearing on the 5th March 2024 EJ Heath identified the claims as discrimination contrary to the Equality Act 2010, unfair dismissal, and failure to pay holiday pay. Mr Shearwood relied upon the protected characteristic of disability (see section 6 of the Equality Act 2010) and at that hearing he identified his disability as Autism Spectrum Condition (ASC).
8. The respondent disputed that Mr Shearwood is a disabled person for the purposes of s.6 Equality Act, and the case was listed for an open preliminary hearing to determine whether Mr Shearwood is disabled.
9. EJ Heath directed Mr Shearwood to provide the following by 16th April 2024:
 - 9.1 A disability impact statement setting out among other things, the effects of ASC on Mr Shearwood's ability to carry out day-to-day activities between March 2020 and April 2023?
 - 9.2 GP records covering the relevant period.
 - 9.3 Any other evidence relevant to whether he had a disability at the relevant time.
10. The open preliminary hearing took place on 23rd October 2024. In a judgment dated 23rd October 2024, EJ Wright was not satisfied that Mr Shearwood had submitted evidence showing that he was disabled at the relevant time. Therefore, his claim for disability discrimination under the Equality Act 2010 was dismissed, and the case proceeded as a claim for unfair dismissal and unpaid holiday pay only.
11. The case management order made by EJ Wright dated 23rd October 2024 attached the list of issues that require determination, which are set out below.

The Issues for determination

12. Unfair Dismissal
 - 12.1 What was the reason for the dismissal? The respondent contends

that the claimant was dismissed for misconduct, a potentially fair reason within the meaning of section 98(2) of the ERA 1996.

12.2 Pursuant to the guidance in *British Home Stores Ltd v Burchell* [1978] IRLR 379:

- (a) Did the respondent believe that the claimant was guilty of misconduct;
- (b) Was the respondent's belief based on reasonable grounds;
- (c) Did the respondent carry out a reasonable investigation;
- (d) Did the respondent follow a fair procedure (the claimant alleges, among other things, that the respondent failed to obtain CCTV of the incident);
- (e) Was dismissal a proportionate sanction in the circumstances.

12.3 In all the circumstances, was the dismissal fair or unfair, having regard to section 98(4) ERA 1996?

13. Holiday Pay

13.1 What holiday pay entitlement did the claimant have upon termination? In particular, was the claimant entitled to carry over any holiday from the holiday year immediately prior to the holiday year in which his employment was terminated?

13.2 Has any such entitlement been paid to the claimant?

14. Unpaid Wages

14.1 To the extent not already covered by the above, does the claimant claim for unpaid 'wages' as defined by section 27(1)(a) of the Employment Rights Act 1996.

14.2 Was the claimant entitled to be paid for the alleged unpaid wages that he seeks based on:

- (a) a contractual entitlement; or
- (b) a non-contractual, legal entitlement? The claimant relies on as yet unspecified persons informing him that his holiday entitlement 'would be frozen while on suspension' and he would receive payment in lieu upon dismissal.

14.3 Is the claim for a quantifiable sum of unpaid wages;

14.4 Has any such quantifiable sum that is properly payable been paid to C.

Findings of fact

15. Unless otherwise stated, the following findings of fact are agreed or unchallenged. The findings were reached on the balance of probabilities, having considered the witnesses' evidence, including documents referred to in that evidence, and considering my assessment of the evidence.
16. Only findings of fact directly relevant to the issues, and those necessary to determine the issues, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. I have not referred to every document that I read and/or was taken to in the findings below, but that does not mean it was not considered if it was referred to in the evidence and was relevant to an issue.
17. The incident on 10th October 2022 that subsequently led to Mr Shearwood's dismissal occurred at the Tesco store in Pinner Green, while he was shopping during his lunch break, with his colleague, Mr Holgate. However, Mr Holgate was not present when the incident took place.
18. Mr Shearwood states that the incident happened when a member of the public pushed to the front of the self-checkout queue that he was standing in, which he objected to. There was an altercation involving Mr Shearwood and this member of the public, who will be referred to as the complainant.
19. Although he was not in uniform, Mr Shearwood was identified as an employee of the respondent because he was driving a brigade vehicle. The complainant reported the incident to the respondent.
20. The complainant's account e-mailed to the respondent on 10th October 2022 includes the following:

"Earlier today in Tesco Pinner Green I was physically assaulted by a man who works for LFB (or was at least driving one of your vans). I had been waiting in the scan as you shop area and the scale not been working on so I was instructed by a member of staff to wait and use one of the self checkout machines to weigh an item. As I was standing there in a different part of where the self checkout queue was, I saw an elderly man, so I let him go and then I walked through after him, and that's when this man (in the pictures attached) walked up to self checkout till and said that I pushed in the queue. I told him that I didn't and tried to explain the situation to him (that a staff member told me to wait and then go ahead and weigh my item there), but he refused to listen and when I placed my purse and item on the scale he shoved me to the ground."

21. The complainant also writes:

"He is an extremely unreasonable person and even the staff were saying a simple apology or acknowledgement of the misunderstanding of the situation could've rectified it, but he refused to do so, calling me names and escalating the situation further by loudly saying there was something wrong with me and I have "mental health issues" which I know was a predictable

attempt to paint me as angry crazy black woman, which is not something that I take lightly at all.”

22. The e-mail continues:

“I am not a confrontational person, but if I'm being brutally honest when I got up I was in such shock I was shaking and I crying and I think I actually pushed him back. I know that that was wrong and I shouldn't of done that, but I was told by several of the other customers (who gave me their number in case I wanted witnesses for a police report.) that I was shaking and they think I was panicked and running on adrenaline.”

23. After receiving this report, on 14th October 2022 Mr Shearwood was suspended from work. The respondent investigated the complainant's complaint.

The respondent's local management investigation

24. The respondent's local management investigation was carried out by Samantha Nevill, Mr Shearwood's supervisor.

25. As part of the local management investigation Ms Nevill contacted the store regarding the CCTV recording of the incident. Mr Moss, the store manager informed Ms Nevill that for data privacy reasons, the store would only release the CCTV to the police, and only if it was required for a police investigation. He stated that the store had not call the police regarding this incident because they considered it had been deescalated. Mr Moss also explained it was against the store's policy for staff members to provide written witness statements for an investigation such as this one.

26. Therefore, the CCTV evidence was viewed by the store manager, Mr Moss, who verbally relayed what he had seen to Ms Nevill who recorded his account as follows:

“James has viewed the CCTV and confirms 2 LFB males enter the store together. They are not captured together on the CCTV at the self-serve checkout.

1 bearded male is seen on the overhead CCTV at the self-checkout and on the self-serve till camera, he shoulder barges a lady to the floor - there is no audio but it looks like the lady is upset and they are arguing, he then leaves the area.”

27. Ms Nevill asked Mr Moss whether he agreed with what she had recorded. In an e-mail he sent to her on 14th October 2022, Mr Moss responded:

“I can confirm your version of events we went over on the phone match up to what I've witnessed on the CCTV”

28. As part of the local management investigation, Ms Neville also obtained an account of what happened from two members of the public, Celine and

Penny, who are seemingly have no connection with Mr Shearwood or the complainant. Therefore, they are independent witnesses.

29. As to what she witnessed directedly, Celine states:

“On Monday 10th October, me and my friend Penny were at self checkout at Tesco Pinner Green and we turned around to see a lady on the floor who looked quite upset and confused. She had her voice raised which caused our attention saying 'you pushed me on the floor, no one's ever pushed me in my life, why did you push me' etc. We didn't see her actually get pushed but we saw her on the floor. Once she was helped up by a member of staff she retaliated and pushed the man back and accidentally pushed the man into another old man, which is when me and my friend intervened and told them to be careful. The man in question looked really unbothered by it all and then went to the other self checkout to purchase his things, all I could hear him say was 'you pushed in, you're the one who pushed in line', other than that I didn't hear him deny it or apologise once about it. I thought if he hadn't done it he would have at least denied it once but he didn't at all.”

30. Penny's account is very similar to Celine's.

The Respondent's Investigation

31. After Ms Nevill completed the local management investigation, the matter was referred to Mr Sid Bessa, the respondent's HR advisor, to carry out the HR investigation.
32. It is understood that in October 2022, the respondent discovered the complainant had decided not to press criminal charges against Mr Shearwood.
33. The significance of that decision was that the store would only retain CCTV footage if it was required for a police investigation, otherwise it would be destroyed after 30 days. Mr Shearwood's unchallenged evidence is that the respondent did not inform him that the CCTV would be destroyed after 30 days because the complainant had not reported the matter to the police.
34. Mr Bessa contacted Mr Shearwood inviting him to attend an investigation meeting on 8th November 2022. However, Mr Shearwood was advised by his union to wait before attending. Therefore, instead of attending the meeting on 8th November 2022, Mr Shearwood submitted his written account of the events on 10th October 2022.
35. Mr Shearwood's account sent on 8th November 2022 read:
- “While queuing on my lunch break for the self service checkout upon reaching the front of the que and a checkout becoming available a woman pushes to the front of the que who was not in the que and in front of me walks to the checkout that has become available. I say to the woman "excuse me why are you pushing in" to which I am ignored and so I try

again to speak to her before I proceed to remove her items from the checkout and scan mine ,this action is then met with the woman using her body weight to lean into me to physically move me out of the way, my response was to extend my elbow to the side to defend myself from being barged out of the way”

36. In his witness statement Mr Shearwood provides the following description:

“I have simply raised my arm in shock at being unexpectedly and aggressively pushed by a member of the public enraged at being asked not to push in the queue, this is a natural reflexive action to protect myself and prevent me losing my balance and is in no way assault.”
37. Mr Shearwood says in his statement that he was confident his account would be confirmed by any CCTV recording, if available.
38. It is common ground that before Mr Shearwood left the store, the security guard on the shop floor asked for the CCTV to be checked, and after this was done, he confirmed it was alright for Mr Shearwood to leave the store. Mr Shearwood says this confirms that he did not assault the complainant.
39. As stated, Mr Shearwood was unaware until sometime later that the CCTV footage was destroyed. It was put to him during cross examination that he could have sought to obtain the CCTV footage himself. He responded that he had no reason to believe this was necessary, as he had been told the respondent was conducting an investigation, which he expected would include recovery and viewing of any CCTV. When asked what difference it would have made if he had known the footage would be destroyed, he said he would have pressed criminal charges himself, which would have ensured the footage was preserved.
40. Mr Bessa interviewed Mr Shearwood as part of the investigation. The interview took place on 29th November 2022. Mr Bessa did not give evidence in connection with this claim. Ms Hale’s statement addresses the investigation interview as follows (see paragraph 13 of her statement):

“Both in his email and interview Mr Shearwood denied that he assaulted the complainant, however, it was Mr Bessa’s case that the direct evidence of the complainant and together with that the store manager, who had viewed the CCTV footage, was evidence that the complainant had been pushed/shoved/shoulder barged to the ground by the complainant. Further, there was the evidence of two independent witnesses who said that they saw the complainant on the ground. Mr Bessa’s view was that on the balance of probabilities the allegation was proven.”
41. It can be seen from the interview transcript that Mr Bessa asked Mr Shearwood whether he told the complainant that she had mental health issues, which Mr Shearwood denied. Mr Bessa considers this denial undermines Mr Shearwood’s credibility because others, including Mr Holgate, confirm Mr Shearwood stated the complainant had mental health

problems. However, I do not consider Mr Bessa's view on this point is justified. Neither Mr Holgate, nor the complainant, nor the independent witnesses allege Mr Shearwood told her she had mental health problems. Instead, the position is that Mr Shearwood said within the complainant's hearing that she had mental health problems. This is accepted by Ms Hale and Ms Ellison-Bunce, who, nonetheless consider this indicates negative stereotyping of the complainant by Mr Shearwood.

42. Mr Shearwood's explanation for making this comment is that Mr Holgate asked him why the complainant was following him and being abusive as he tried to leave the store, to which he referred to her having mental health problems. He also argues, it is not inappropriate to refer to someone having mental health problems because the terminology is used by the NHS, and the complainant refers to herself as "crazy". However, Mr Shearwood has misunderstood the complainant's point: she is not claiming to have mental health problems, but alleges that she was being stereotyped as having mental health problems.
43. In a letter dated 31st January 2023 Mr Shearwood was invited to attend a Stage 3 hearing on 27th February 2023 that would deal with the following allegation:

"On the 10 October 2022 you physically assaulted a member of the public in Tesco, Pinner Green therefore bringing the LFB into serious disrepute."

The disciplinary hearing

44. The disciplinary hearing began on 27th February 2023. It was chaired by Angela Hale, the respondent's Head of Training Change. She was advised by Mr Cathersides, an advisor in the respondent's Professional Standards Unit.
45. Mr Shearwood was present and was represented by Mr Adje, his union representative.
46. Ms Hale states that Mr Shearwood provided different accounts of what happened on 10th October 2022, describing these in paragraph 16 of her witness statement as follows (Ms Hale's emphasis):

"... She leaned in with her full body weight, the woman was larger than me, she tried to barge me out away, I put my arm up to protect my own safety. **She stumbled away and lost her balance.** But this is because she had leaned into me. [p237]

"..." She lost her balance; I would like to see the CCTV footage of this. I **don't believe she was on the floor.** She would have lost her balance because she was leaning into me. I had word holds full of items, she was behind me, so I didn't get a full glimpse..." [page 238]

“We need to get clarification around fell to the floor and the language. I didn't see anyone open the floor..[p238]”

47. I put my arm up, the distance was created. Next time I looked she was standing up. **I did not see her on the floor ...[p238]**
48. In my judgement, any differences in Mr Shearwood's account are not material. He consistently states the complainant leaned into him, and that he put his arm up. As to whether the complainant was on the floor, he twice states he didn't see her on the floor, and also states he doesn't believe she was on the floor. The context of the latter assertion is that he believes she lost her balance, but presumably questioned whether she ended up on the floor. However, the significant point is that he is consistent in describing his actions, in particular, that he put his arm up as the complainant passed him.
49. Having heard from both sides, Ms Hale adjourned the disciplinary hearing. When they reconvened later that day, she announced that she had concluded the allegation was proven, and proceeded to deal with mitigation and sanction.
50. During this part of the hearing, Ms Nevill provided her character reference for Mr Shearwood.
51. In his evidence to the Tribunal, Mr Cathersides confirmed that neither Mr Shearwood (nor Ms Hale) saw the character reference until Ms Nevill read it out the disciplinary hearing. Mr Cathersides stated the respondent's disciplinary procedure contains no provision for character references, but line managers routinely provide them following a finding of guilt in the way Ms Nevill had done.
52. As to Ms Nevill's character reference, it begins:

“Ryan has been under my management since joining the brigade August 2019 – 3½ years.

In that time I have found Ryan's interpersonal skills can be lacking he can be difficult to engage with, can come across as abrupt and rude corner sometimes in a defensive aggressive way. He seems unaware of how this is interpreted by others or how it reflects on him personally. Ryan can be difficult to manage when challenged or questioned, has made disrespectful comments to me in the past and has been unaccepting of management direction regarding instruction, policy or procedures. Ryan has little interaction or rapport with the rest of the team.

Ryan's Probationary period was extended an extra 6 months due to complaints received from the station commander at his base station Chelsea. Station staff had complained about Ryan's attitude and disrespectful behaviour while on the station. A complaint also made to the station commander from the borough commander regarding Ryan's

disrespectful conduct, behaviour and attitude shown to him whilst on the station. This was discussed with Ryan at the time."

53. The remainder of the reference mainly deals with what Ms Nevill describes as Mr Shearwood's lack of respect for Brigade property, for instance referring to the number of accidents he has had while driving his work vehicle.
54. It was at this point during the hearing that Mr Shearwood stated he was neurodiverse and believed his managers had not provided adequate support. He also stated that Ms Nevill's character reference was a character assassination.
55. In light of Mr Shearwood's disclosure about being neurodiverse, Ms Hale adjourned the disciplinary hearing. During the adjournment, she asked Mr Cathersides to make enquiries of occupation health. The respondent's external occupational health provider, Dr Chavada duly advised.
56. Ms Hale also sought advice from Dr Pilkington, the respondent's occupational psychologist and Head of Leadership Development, who advised that there were no records of Mr Shearwood being referred to the Learning Support team.
57. The reconvened hearing took on 18th April 2023, when Ms Hale notified Mr Shearwood that the sanction to be imposed was dismissal.
58. She confirmed her decision in writing by a letter dated 18th April 2023, which was accompanied by the record of the reasons she gave at the disciplinary hearing on that date, and which includes the following:

"... in reaching my decision on the allegation on the balance of probabilities I noted that the CCTV witness account was consistent with Mr Shearwood's account in that you physically pushed shoulder barged a member of the public to the ground.... There is no supporting evidence to support your version of events.

You have denied the allegations put to you and have shown no remorse for what was found to have occurred ...

In making my decision, I have to balance the duty of care the Brigade has Towards you as against the duty of care it has towards all staff, along with protecting members of the public. Even if you had been diagnosed as neurodivergent, which for the avoidance of any doubt is not the case, I'm not satisfied that there are any suitable nor reasonable adjustments which could mitigate the risk of you assaulting another member of the public or a colleague in the future."

59. Both parties agree that 16 days of Mr Shearwood's holiday entitlement were unused when Mr Shearwood's employment ended on 18th April 2023. They also agree he was only paid for 7.5 days holiday pay.

60. Mr Shearwood believes he should have been paid for all 16 unused days. In his e-mail correspondence with the respondent, Mr Shearwood states that Mr Muller informed him that he was owed 16 days of annual leave. Mr Muller confirmed this in an e-mail sent to the respondent's employee relations manager, Mr Dunn, on 21st June 2023 which is in the hearing bundle.
61. An employee may apply for additional unused holiday pay to paid under the respondent's PN367 procedure. Any additional pay must be approved by the assistant director of people services. There was no evidence or argument that this approval was given to Mr Shearwood.

The Appeal

62. The appeal was conducted by Ms Ellison-Bunce. In a letter dated 26th April 2023 she notified Mr Shearwood that she intended to conduct the appeal as a review rather than a re-hearing, but offered him the opportunity to make submissions if he wished it to be conducted as a re-hearing. He was also offered the opportunity to call witnesses to attend the appeal hearing. Mr Shearwood did not request that the appeal be conducted as a re-hearing, nor did he request to call witnesses.
63. The appeal hearing took place on 22nd May 2023. Those present at the hearing were Ian Dunn as HR adviser, Ms Hale representing management, Mr Shearwood, and his union representative, Mr Adje.
64. In her witness statement Ms Ellison-Bunce addresses the grounds of appeal raised by Mr Shearwood at the outset of the hearing as follows:
65. The first ground of appeal raised various procedural defects.
 - 65.1 Firstly, procedural defects arose from the respondent's initial request for Mr Shearwood to respond to the complaint before being provided with details of the complaint.
 - 65.2 Secondly, Mr Shearwood argued that his comment about the complainant having mental health problems was taken out of context.
 - 65.3 Thirdly, Mr Bessa stated he was unaware that Mr Shearwood's position was he had acted out of self-defence when he made contact with the complainant. Therefore, Mr Shearwood argued, Mr Bessa failed to properly understand the case. He also believes this failure is the reason the Assault on Emergency Workers Act (Offences) 2018 was not engaged.
 - 65.4 Mr Shearwood further contends that Mr Bessa sought to discredit him by suggesting that his behaviour towards the complainant, who

is a Black woman, was discriminatory, and contrary to the respondent's cultural review.

- 65.5 Finally, regarding procedural defects, Mr Shearwood argued that the information available about the CCTV footage was inaccurate, unreliable, and potentially tainted. He also objected to being denied the opportunity to rely on the CCTV footage, which was no longer available.
66. The second ground of appeal was that the allegation had not been proved on the balance of probabilities. Mr Shearwood argued that in the absence of the CCTV footage and due to an incomplete statement describing the footage, which omitted the beginning of the altercation, his account should have been accepted. He referred to his experience of working with the public, and his clean employment record, in contrast to what he described as the complainant's bad character.
67. Mr Shearwood's third ground of appeal was that the sanction was too severe. He stated when there was no member of store staff present, he intervened to address the complainant's anti-social behaviour - namely her pushing in the queue. He said he used proportionate force, which caused the complainant to lose her balance.
68. He believes that, as a result of his neurodiversity he was subjected to negative stereotyping during the disciplinary process.
69. Ms Hale then presented the management case. As a reasonable adjustment for Mr Shearwood, Ms Hale presented one issue at a time, allowing Mr Shearwood an opportunity to respond before moving on to the next.
70. At the appeal hearing, in explaining her reasons for dismissing Mr Shearwood, Ms Hale reiterated that she considered the allegation against Mr Shearwood to be proven on the balance of probabilities. Furthermore, although she had not been provided with any formal diagnosis of Mr Shearwood's neurodiversity, she considered that the respondent owed a duty of care to its employees and the public, and that there were no reasonable adjustments that could mitigate the risk of Mr Shearwood assaulting a member of the public or a colleague. She also found his behaviour to be unacceptable, contrary to the respondent's values, and considered his behaviour brought the respondent into serious disrepute.
71. Ms Hale disagreed that there had been any procedural irregularities during the investigation interview with Mr Bessa or during the disciplinary hearing. She did not consider it made any material difference to the outcome whether Mr Shearwood had said to the complainant directly that she had mental health problems as Mr Bessa believed, or had said it within her earshot.

72. Finally, she had no reason to believe the witness statements from Tesco and other witnesses were given in bad faith.

73. After hearing all the arguments, Ms Ellison-Bunce adjourned the appeal hearing to allow time to reach a decision.

74. During the adjournment, Mr Shearwood submitted further representations regarding the appeal on 2nd June 2023, which concluded as follows:

“The character reference from Samantha Neville was a highly unfavorable and biased representation of myself. I have received numerous praise and confirmation of good work from Samantha herself yet not one positive thing was said in the reference even though after five years of service I have never been involved in any disciplinary procedure or complaint from my managers.”

75. On 13th June 2023 Ms Ellison-Bunce e-mailed Mr Shearwood notifying him that his appeal was dismissed, that the decision to dismiss him for gross misconduct was upheld, and that his last day of employment had been 18th April 2023. She confirmed this in a letter dated 20th June 2023, in which she finds that the investigation and disciplinary hearing were conducted appropriately, and Ms Hale was justified in finding the allegation proven.

76. As to that finding, Ms Ellison-Bunce states:

“...There is no doubt that the complainant was pushed with sufficient force for her to lose her balance and fall over. This was in response to your view that the complainant had pushed into the queue and pushed you. The action you took escalated the situation and caused the complainant to fall over. At no point have you taken responsibility for that action nor shown any remorse for your conduct. Given your training, you should have been able to take appropriate action to defuse the situation, however your actions that day escalated matters. You also admit to describing the complainant as having mental health issues, which is not appropriate in the circumstances. Furthermore, you were identifiable as an employee of LFB and your actions left a poor impression on the complainant and the witnesses to the incident.

On reviewing the evidence, I agree with the PM's view that there is no evidence to support your version of events and that on the balance of probabilities the allegation is proven...”

77. Ms Ellison-Bunce addressed some of the points that Mr Shearwood raised in his 2nd June 2023 e-mail, but she did not address the points he raised about Ms Nevill being.

78. The key factual dispute in this case is what happened at the self-checkout queue on 10th October 2022. The respondent finds Mr Shearwood assaulted Mr Shearwood, which he denies.

79. I find it is more likely than not that Mr Shearwood's account of the altercation on 10th October 2022 is accurate for the reasons set out below.
80. The complainant's account is that during an altercation with Mr Shearwood he "shoved her to the ground". Neither of the independent witnesses saw Mr Shearwood shove the complainant, and he denies doing so. Mr Moss does not described Mr Shearwood as shoving the complainant, he states Mr Shearwood shoulder barged the complainant. While that is also not entirely consistent with Mr Shearwood's account, Mr Moss' description is closer to Mr Shearwood's account than it is to the complainant's. Furthermore, without describing what, if anything, the complainant did before Mr Shearwood shoulder barged, the shoulder barge could be as a result of the complainant leaning into Mr Shearwood and him putting up his arm, as he describes. However, due to the deficiencies in the investigation, the opportunity to question Mr Moss about events immediately prior to the account he has given, has been lost since the destruction of the CCTV.
81. Nonetheless, the respondent has found Mr Shearwood assaulted the complainant based on her account, which it claims is supported by the independent witnesses. However, as stated, they did not see Mr Shearwood shove (or push) the complainant. The extent of their support of the complainant's account is that both witnesses state Mr Shearwood did not deny pushing her when accused of doing so. I find that is a neutral point, because while he did not deny it, he also did not admit doing so.
82. Furthermore, other evidence is inconsistent with Mr Shearwood having assaulted the complainant. The witnesses describe him as unbothered by the events, which is at odds with him being so annoyed by the complainant that he assaulted her. His indifferent demeanour is also captured in the close-up photographs taken of him at the time. In fact, it seems unlikely that the witnesses would have taken photographs of him while so close to him if his demeanour was aggressive. Yet further, before leaving the store his unchallenged evidence is that, after arranging for someone to view the CCTV footage, the security guard confirmed he could leave. These actions and the security guard's response do not seem consistent with Mr Shearwood just having assaulted the complainant.
83. Taken together, the factors at paragraphs 79 to 81 above, lead me to prefer Mr Shearwood's account.

The law

Unfair Dismissal

84. Section 94 of the Employment Rights Act 1996 gives employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to an employment tribunal under section 111. The claimant must show that he was dismissed by the respondent under section 95.
85. So far as is relevant, section 98 of the Employment Rights Act 1996 states:

- (1) *In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-*
- (a) *the reason (or, if more than one, the principle reason) for the dismissal, and*
 - (b) *that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
- (2) *A reason falls within this subsection if it-*
- (a) ...
 - (b) *relates to the conduct of the employee*
86. Section 98(4) deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.
87. In misconduct dismissals, there is well-established guidance on fairness within section 98(4) in the decisions in **Burchell 1978 IRLR 379** and **Post Office v Foley 2000 IRLR 827**. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439**, **Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23**, and **London Ambulance Service NHS Trust v Small 2009 IRLR 563**).

Wages and holiday pay

88. Section 13(1) of the Employment Rights Act 1996 reads:
- "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."
89. Section 13(3) continues:
- "Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."
90. Finally, subsection 27(1)(a) defines wages to include holiday pay.

Conclusion on unfair dismissal

91. I have applied the above law to the relevant facts, including agreed or unchallenged facts, and my findings of fact. I now apply those facts and the law in order to address the issues that require determination, and my conclusions on those issues are set out below.

What was the reason for the dismissal?

92. The respondent contends that Mr Shearwood was dismissed for misconduct
93. Although the parties disagree about what happened in the Tesco store on 10th October 2022, they agree it was the altercation involving Mr Shearwood and the complainant that was the reason the respondent dismissed him. In particular, it was the respondent's findings about Mr Shearwood's conduct on that occasion, that he had assaulted the complainant, that led to his dismissal.
94. After the complainant reported the incident to the respondent, Ms Nevill, Mr Shearwood's supervisor, was tasked with conducting the local management investigation. This was followed by an HR investigation carried out by Mr Bessa, an HR advisor employed by the respondent. These investigations, and the subsequent disciplinary and appeal hearings all dealt with the incident on 10th October 2022, which is also expressly stated to be the reason for dismissal.
95. Absent any dispute between the parties, I find the reason or principal reason for Mr Shearwood's dismissal was conduct.

Is it a potentially fair reason within the meaning of section 98(2) of the ERA 1996

96. I find that conduct is a potentially fair reason for dismissal under section 98(2)(b), which is cited at paragraph 85 above. There is no dispute on this between the parties

Did the respondent believe that the claimant was guilty of misconduct

97. I conclude that the respondent genuinely believed Mr Shearwood was guilty of misconduct. It made enquiries of the complainant, interviewed Mr Shearwood, held a disciplinary hearing, and conducted an appeal hearing, all of which addressed the issue of Mr Shearwood's alleged misconduct. Given the time and resources devoted to the process, and the views expressed by Mr Bessa, Ms Hale and Ms Ellison-Bunce, I am satisfied that the respondent genuinely believed misconduct had occurred.
98. There is no evidence to suggest that Ms Hale, who made the decision to dismiss, and Ms Ellison-Bunce, who upheld the decision on appeal, had any reason for their decisions other than their finding that Mr Shearwood was guilty of misconduct.

Was the respondent's belief based on reasonable grounds

99. To assess whether the belief was based on reasonable grounds, I must consider the reasonable belief of the decision-maker at the time the decision to dismiss was made. The decision-maker in this case was Ms Hale. Therefore, I need to examine what she actually knew and whether, based on that knowledge, she had reasonable grounds for believing that Mr Shearwood was guilty of misconduct.
100. Ms Hale was presented with the evidence resulting from the investigation. Based on that evidence and what she heard during the hearing, my view is that, at the time she made the decision to dismiss, she did have reasonable grounds for the belief she formed.
101. Up to the point at which Ms Hale found the allegation had been proven it was reasonable for her to proceed on the basis that the investigation had been properly conducted.
102. The evidence she was presented with from Mr Moss was that the CCTV footage broadly supported the complainant's account. Furthermore, it is evident from her reasons for finding the allegation proven that she relied on what was stated to be on the CCTV footage.
103. Therefore, based on the evidence available to Ms Hale up to that point, I consider it was within the range of reasonable responses that she found the allegation proven. Mr Shearwood had not been given an opportunity to deal with the recording, and it was not available to at the hearing, which may have given another chair pause for thought. However, on its own, that

was insufficient to question Mr Moss' account of what was shown on the footage, absent any independent evidence to undermine his account.

104. After Ms Hale announced she found the allegation proven, Ms Nevill read out the character reference she had prepared for Mr Shearwood. As stated above, neither Mr Shearwood nor Ms Hale were provided with a copy of the reference before it was read at the hearing. It was evident from Mr Shearwood's reaction during the appeal hearing that he took issue with the contents of Ms Nevill's character reference.
105. It is from this point that I consider the disciplinary process was conducted in a deficient and/or procedurally irregular manner for the reasons set out below.
106. Firstly, I do not consider a reasonable employer would depart from its disciplinary procedure by receiving a character reference.
107. Secondly, if notwithstanding this departure from the disciplinary procedure, a character reference was going to be presented at the hearing, a reasonable employer would have disclosed a copy of the reference to the employee in all cases, but particularly where the character reference was as negative as Ms Nevill's.
108. Thirdly, on the face of it, the character reference was very negative and potentially indicated Ms Nevill may be biased against Mr Shearwood. However, when considering the contents of the reference against Mr Shearwood's unchallenged evidence that he had a clean disciplinary record, and at the time had been shortlisted for promotion, that inconsistency would indicate to a reasonable employer that there was likely to be actual bias.
109. Fourthly, Ms Hale relied on Mr Moss' account of the CCTV footage as recorded in the statement Ms Nevill wrote, bearing in mind Mr Moss' account omitted the witnesses evidence that the complainant pushed Mr Shearwood. In those circumstances, and having cause to retrospectively doubt Ms Nevill's impartiality, a reasonable employer would take these factors into account and reassess the weight it should attach to the CCTV evidence.
110. Nonetheless, these are matters that either arose after Ms Hale had found the allegation proven. In my judgment, at the time Ms Hale reached her decision during the disciplinary hearing, there were reasonable grounds for her to find the allegation proven.
111. However, after Ms Nevill read Mr Shearwood's character reference, and therefore, by the date of the appeal hearing, a reasonable employer would by then have realised that the disciplinary process was tainted by Ms Nevill's involvement, rendering the process unfair.

Did the respondent carry out a reasonable investigation

112. Aspects of the investigation that were satisfactory were that appropriate enquiries were made of the complainant and the witnesses to the altercation. Mr Shearwood was given an opportunity to provide his account of the altercation, invited to an investigation meeting, notified disciplinary action would be taken, given advance notice of the disciplinary hearing at which he was represented, and afforded an opportunity to appeal.
113. However, I find that in some fundamental respects the respondent failed to carry out a reasonable investigation.
114. Firstly, I find that Ms Nevill, who conducted the local management investigation, was likely to be biased against Mr Shearwood. My reasons are at paragraphs 50 to 54, and 108 above.
115. Mr Shearwood believes that Ms Nevill was biased towards him because she had failed to provide appropriate support to him as his supervisor when he spoke to her about being neurodiverse. To support his allegation that Ms Nevill is biased, Mr Shearwood says she lied during the disciplinary hearing when she denied discussing Mr Shearwood's support needs with her manager, Mr Kevin Muller. Her denial is recorded in the transcript of the disciplinary hearing (see page 244).
116. However, a few days later, on 1st March 2023 Ms Nevill e-mails Mr Cathersides (see page 412) with communications she had regarding Mr Shearwood stating he was neurodiverse. In this e-mail she states she had in fact spoken with Mr Muller regarding Mr Shearwood's neurodiversity on 8th April 2022, and provides an account of that conversation, which she says is based on her recollection.
117. It is unclear to me why two days earlier during the disciplinary hearing she said she had not spoken with Mr Muller about Mr Shearwood being neurodiverse, but subsequently provides an account of a conversation 11 months previously that she had with Mr Muller about this. It may be that she had forgotten the conversation with Mr Muller, but her response during the disciplinary was not that she was unable to remember whether she had spoken with Mr Muller. Furthermore, if she had forgotten speaking with Mr Muller, it is unclear how she was subsequently able to recall what they discussed on 8th April 2022 when she e-mailed Mr Cathersides on 1st March 2023 about the discussion. There is no evidence in these proceedings Ms Nevill for reasons that have not been explained. Consequently, the only direct evidence regarding Ms Nevill is from Mr Shearwood, and the contemporaneous documentation is capable of supporting his direct evidence. Taking all these factors into account, I have concluded it is more likely than not that the information Ms Nevill has provided (e.g. the character reference), and the information she obtained (i.e. Mr Moss' account of the CCTV footage) is unreliable.
118. Those are my reasons for finding the investigation was not reasonable.

Did the respondent follow a fair procedure

119. My conclusion is that it was not a fair procedure. That is firstly because the respondent reached its decision following what I have found to be an unreasonable investigation.
120. In addition to Ms Nevill's involvement, I consider there are broader problems with the way the CCTV evidence was dealt with.
121. From the written account Mr Shearwood provided on 8th November 2022, it was evident he considered the CCTV footage would exonerate him. The respondent was aware that the CCTV would be destroyed after 30 days. The only exception was that it would be released to the police as part of a police investigation. However, the respondent was also aware that the complainant had decided not to report the matter to the police. Yet Mr Shearwood was first told about this at the disciplinary hearing, by which time the footage had been destroyed. I consider a reasonable employer would have told Mr Shearwood about this before the CCTV was destroyed. Mr Shearwood's evidence during cross examination was that if he had been told about this earlier he would have reported the matter to the police himself so that the CCTV would be preserved. Therefore, the failure to inform him in a timely manner deprived Mr Shearwood of the opportunity of having any access to the CCTV either directly, or by putting questions to Mr Moss about what was on the footage before it was destroyed.
122. The respondent's failings in this regard undermined Mr Shearwood's ability to effectively respond to the allegation. This is particularly unfair because the account of the CCTV footage that Ms Nevill took from Mr Moss is incomplete when compared to the evidence from the independent witnesses.
123. Mr Moss's account, as recorded by Ms Nevill, primarily describes the actions of Mr Shearwood. He does not provide much information about the complainant's behaviour, beyond noting that she walked past Mr Shearwood. However, he does not elaborate on what else the complainant did.
124. As for the physical contact, Mr Moss is recorded as saying that the complainant was shoulder-barged to the floor by Mr Shearwood. This differs from the complainant's own description, which was that she was shoved. For Mr Moss to describe Mr Shearwood as shoulder barging the complainant seems unnatural language to use if Mr Shearwood was seen shoving the complainant. But as the CCTV had been destroyed by the date of the disciplinary hearing, the opportunity to ask Mr Moss to clarify was lost.
125. I consider these deficiencies and irregularities are significant, not only because Mr Shearwood identified that the CCTV would be significant, but because those making decisions on behalf of the respondent at every stage relied on Mr Moss' account of the CCTV footage, which was at best,

incomplete, and which Mr Shearwood had been denied a proper opportunity of dealing with. This is compounded by the issue of whether Ms Nevill is or is not biased against Mr Shearwood which is dealt with above.

126. Taken together, the incomplete account of the CCTV, which was recorded by Ms Nevill, in respect of whom there was evidence of bias, a reasonable employer would have addressed this as part of the appeal. However, Ms Ellison-Bunce did not do so.
127. After the appeal hearing, but before the decision on appeal was notified, Mr Shearwood e-mailed Mr Dunn on 2nd June 2023. His e-mail included the allegation that Ms Nevill was biased against him. Ms Ellison-Bunce's appeal decision states Mr Shearwood's 2nd June 2023 e-mail was taken into account, but this particular issue is not addressed in the appeal decision.
128. During her evidence to the Tribunal, I asked Ms Ellison-Bunce whether in light of Ms Nevill's character reference that gave her grounds to question the latter's objectivity, Ms Ellison-Bunce responded that it didn't.
129. Mr Shearwood, also asked Ms Ellison-Bunce whether there was an inconsistency in Ms Nevill stating at the disciplinary hearing that she had not discussed Mr Shearwood's neurodiversity with Mr Muller, but later providing communications showing it had been discussed. Ms Ellison-Bunce did not accept this as an inconsistency, and it was only after being pressed on the point that she somewhat reluctantly accepted there was a "difference" rather than an "inconsistency."
130. I consider Ms Ellison-Bunce's evidence on these points, show an unquestioning acceptance of the evidence obtained and given by Ms Nevill beyond the degree of a reasonable employer.

Was dismissal a proportionate sanction in the circumstances

131. I also do not consider dismissal was a proportionate sanction in the circumstances.
132. One of the reasons Ms Hale gives for dismissing the respondent is that it's claimed Mr Shearwood showed no remorse. However, when mitigating on his behalf Mr Adje said Mr Shearwood regrets what happened, adding "He is remorseful in terms of what has happened" (see page 242).
133. It therefore seems either Ms Hale has not taken these comments into account, or she expected more by way of remorse, but it is unclear how else she expected Mr Shearwood to express remorse. In my judgment, a reasonable employer would have accepted those comments as an expression of remorse.
134. Mr Shearwood has stated that due to his neurodiversity he has difficulty with communication, and he complains the respondent failed to take that into

account when claiming he lacked remorse.

135. An additional reason for dismissing Mr Shearwood was that the respondent concluded his continued employment presented a risk to his colleagues and the public that no reasonable adjustments could mitigate. However, Mr Shearwood raised his neurodiversity in the context of having difficulties with communication. And I cannot see the grounds for believing Mr Shearwood posed a risk to others, and nor were any such grounds properly explained to him.
136. In my judgment, absent any supporting evidence, a reasonable employer would not have made a connection between Mr Shearwood's neurodiversity and an alleged risk of assaulting others.
137. For the reasons stated above, I do not consider Mr Shearwood's dismissal was within the range of reasonable responses available to the respondent insofar as the investigation is concerned, the sanction imposed, and that the appeal hearing did not consider the issue of whether Ms Nevill was biased properly or at all. I have also had regard to the respondent's resources, it has access to adequate HR resources, consistent with its size, as an organisation employing over 5,500 individuals.

Conclusion on wages and holiday pay

138. Mr Shearwood confirmed that his wages claim consists entirely of the 16 days unpaid holiday pay.
139. My conclusions on these issues are set out below.

What holiday pay entitlement did the claimant have upon termination?

140. By clause 13 of Mr Shearwood's employment contract, only unused statutory holiday entitlement would be paid on termination of employment. Any additional contractual holiday pay would be forfeited.
141. Therefore, although Mr Shearwood had 16 days of remaining holiday, only 7.5 of those days were his statutory entitlement; the remainder was a contractual entitlement. Under clause 13 of his contract, the additional entitlement was lost when his employment ended.

In particular, was the entitled to carry over any holiday from the holiday year immediately prior to the holiday year in which his employment was terminated?

142. An employee does not have an automatic right to carry over unused holiday. Clause 13 of Mr Shearwood's employment contract makes no express provision for carrying over unused annual leave into the next year. Therefore, he had no right to do so. Furthermore, he had not requested nor been given permission to carry over any annual leave.

Has any such entitlement been paid to the claimant

143. Mr Shearwood was only paid for his unused statutory entitlement because he had no right, and was not given permission to carry over contractual annual leave from one year to the next.

To the extent not already covered by the above, does the claimant claim for unpaid 'wages' as defined by section 27(1)(a) of the Employment Rights Act 1996. Was he entitled to be paid for the alleged unpaid wages that he seeks based on a contractual entitlement

144. As previously stated, Mr Shearwood was only entitled to be paid for his statutory unused holiday pay, which amounts to the 7.5 days he was paid for.

Was the claimant entitled to be paid for the alleged unpaid wages that he seeks based on a non-contractual, legal entitlement? The claimant relies on as yet unspecified persons informing him that his holiday entitlement 'would be frozen while on suspension' and he would receive payment in lieu upon dismissal.

145. Correspondence between the parties shows that Mr Shearwood made various enquiries regarding his holiday. In their direct communications with Mr Shearwood regarding holiday pay, HR's position was consistent with the provisions set out at clause 13 of Mr Shearwood's employment contract.
146. Although it appears that, in his communications with Mr Muller, Mr Shearwood was informed he had 16 days of unused holiday, that does not mean he was entitled to be paid for 16 days holiday pay when his employment ends. His entitlement was governed by the terms of his contract, which stated he was entitled to 7.5 days.
147. There is no evidence of any agreement outside Mr Shearwood's contract that would entitle him to payment for more than his statutory holiday entitlement. There is no evidence that Mr Shearwood applied under the respondent's PN367 to be paid additional holiday pay.
148. Furthermore, Mr Shearwood is not arguing the respondent approved payment of 16 days holiday pay under the PN367. His argument is that he was told he was owed 16 days. However, as stated, that does not amount to a variation of clause 13 of his contract.

Is the claim for a quantifiable sum of unpaid wages

149. The amount claimed is quantifiable: it is the 8.5 days of unused holiday calculated as the 16 days unused, less the 7.5 days taken.

Has any such quantifiable sum that is properly payable been paid to the claimant.

150. For the reasons stated above, the amount properly payable to Mr Shearwood is 7.5 days, which has been paid to him.
151. In light of paragraphs 138 to 150 above, I find the claim for wages/holiday pay is not well-founded.

Employment Judge Tueje
18th September 2025