Case No: 3313783/2023

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr L. Moore	v	Greene King Retail Services Limited

Heard at: Bury St. Edmunds on 9th, 10th, 11th and 12th September 2025

Before: Employment Judge: Mr. A Spencer
Mr. G. Page (non-legal member)
Mr. S. Holford (non-legal member)

Appearances:

For the Claimant: In person / assisted by Hayley Moore (the claimant's wife)

For the Respondent: Mr. L. Varnum (counsel)

JUDGMENT having been sent to the parties on 23 September 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. The respondent is a large pub retailer which operates licenced premises across the country. This includes the Rushbrooke Arms, Bury St Edmunds.

2. The claimant was employed by the respondent from 15 September 2023 until 23 November 2023. He worked at the Rushbrooke Arms as a Back of House Team Member (Kitchen Chef). The claimant presented his claim form on 3 December 2023 after a period of ACAS early conciliation from 21 November 2023 to 23 November 2023.

3. The Claimant makes the following complaints:

   (a) Disability discrimination (failure to make reasonable adjustments); and
   (b) Unauthorised deductions from pay (failure to pay wages);
   (c) Holiday pay

4. The claimant has dyslexia and struggles to read or write.

5. The claimant says that he was promised 32 hours of work per week and accepted the job on this basis. The respondent disputes this. The respondent says that the claimant was not promised any minimum working hours per week but was told that it was anticipated that he would work at least 8 hours per week. The claimant says that he was underpaid wages and holiday pay. He says that these sums should have been calculated based on working hours of 32 per week. The respondent has calculated and paid the sums based on working hours of 8 hours per week.

6. The claimant also says that he was disadvantaged by his dyslexia. He says that the respondent required their kitchen staff to be able to read food orders and to undertake online health and safety training which also involved reading. He also says that the respondent had a practice of sending written invitations to grievance hearings. The claimant says that these practices put him at a substantial disadvantage as he struggled to read because of his dyslexia. He says that the respondent should have made adjustments to alleviate these disadvantages. This included providing an auxiliary aid, namely a Bluetooth headphone to overcome his difficulties reading customer food orders. The claimant brings a disability discrimination claim on the basis that the respondent failed to make reasonable adjustments. He also complains of failure to pay wages and holiday pay.

7. The claims and the issues for the tribunal to determine are set out in the case management summary/orders prepared following a preliminary hearing before Employment Judge Graham on 6 January 2025.

8. Judge Graham directed that the four day final hearing would determine issues of liability only. However, the position changed at the outset of the hearing. A few days before the hearing the respondent accepted liability for the disability discrimination claim. However, the remaining pay claims were still in dispute.

9. It was agreed with the parties that the first of the four days would be spent:

    (a) with the tribunal reading the documents; and
    (b) the claimant producing a further witness statement to address the remedy issues.

10. It was agreed that we would begin hearing evidence on day two with a view to determining all remaining issues within the four days (i.e. to determine liability in relation to the holiday pay and wages claims and remedy for all claims).

11. Various adjustments were made to accommodate the claimant's difficulties to ensure that he could participate fully in the hearing and give his best evidence. Those adjustments are identified in the case management order made by Judge Graham. In addition:

    (a) the claimant brought a pen reader and earpiece with him. This is a device which automatically reads text and relays it orally to the claimant through an earpiece. This was available to the claimant for use during the hearing but he did not need to use it;
    (b) The claimant's wife also assisted him while he gave his evidence by finding relevant documents.

Witnesses

12. We heard evidence from the claimant and his wife, Hayley Moore.

13. For the respondent, we heard evidence from Damien Flint, the General Manager of the Rushbrooke Arms from December 2023;

14. These witnesses gave evidence under oath or affirmation. They confirmed the truth of their written statements. We had the benefit of seeing their evidence tested under cross examination and the opportunity to put questions to the witnesses ourselves.

15. We were also provided with written statements for three other witnesses for the respondent. They were:

    (a) Tom Border, the respondent's Payroll Lead;
    (b) Lance Brown, the respondent's General Manager at the Rushbrooke Arms from May to December 2023
    (c) Cassie Hunt, the respondent's Employee Relations Case Manager at the material time.

16. We took into account the evidence of these three witnesses. We placed less weight upon their evidence. They did not attend to give evidence. We did not have the opportunity to see their evidence tested under cross examination or to ask them questions ourselves.

Documentary evidence/submissions

17. We considered the contents of a hearing bundle and written statements from each witness.

18. We also heard oral closing submissions from the respondent's counsel and the claimant's wife.

Findings of fact

19. We restrict our findings of fact to those required to determine the remaining issues.

20. We reminded ourselves that the applicable standard of proof is the so-called "balance of probabilities". In other words, if the parties dispute a fact we need to consider which account of events is more likely to be correct. We do not need to be satisfied that something is 100% correct. We merely need to be satisfied that something is more likely than not to be the case.

21. The respondent is a large pub retailer and operates licenced premises across the country. This includes the Rushbrooke Arms, Bury St Edmunds.

22. The claimant has dyslexia. A dyslexia assessment conducted in March 2021 records the (then) current working definition of dyslexia as

"*a learning difficulty that primarily affects the skills involved in accurate and fluent*

word reading and spelling. Characteristic features of dyslexia are difficulties in phonological awareness, verbal memory and verbal processing speed. Dyslexia occurs across the range of intellectual abilities. It is best thought of as a continuum, not a distinct category, and there are no clear cut off points. Co-occurring difficulties may be seen in aspects of language motor coordination, mental calculation, concentration and personal organisation but these are not by themselves markers of dyslexia."

23. The report confirms that the claimant has weaknesses in reading, spelling phonological processing and short-term auditory memory. When reading, the claimant struggles to interpret certain words accurately and fluently. Added to this he often forgets the content of the text indicating an impairment in reading comprehension. He also struggles to read at an efficient speed. These difficulties with literacy and numeracy are described as "*extensive*."

24. The report stated that:

"[the claimant] *will require assistance to improve his retention abilities when reading as well as revising such as by using a combination of computer software and tuition. Following verbal instructions may also prove difficult without adequate support"*

25. The claimant was vulnerable with regard to problems at work relating to his dyslexia. He had a lengthy period of unemployment. However, this was due to being involved in a lengthy Family Court case which lasted several years. When he returned to the workplace he experienced problems at work with two employers concerning his dyslexia:

    (a) He raised a grievance to his former employer Dignity (a funeral director). In his grievance he complained of discrimination because of his dyslexia. The grievance was not resolved to his satisfaction and he resigned.

    (b) After that, in November 2020, the claimant started another job with an employer that he cannot name for legal reasons. He was placed in a role which required him to read and write. This increased his anxiety to the extent that he was, as he described "*suicidal and a total mess*". He saw the psychiatric liaison team at the West Suffolk Hospital.

26. The claimant secured the jobs referred to above by displaying an admirable amount of determination. He printed out his CV and visited potential employers to enquire about available work and to hand out copies of his CV. As a result of that determination, he was successful in securing the jobs referred to above.

27. The claimant was then unemployed again for about three years. After a period that he described as "*sorting myself out… and feeling in a better place*" he applied for a job with the respondent that was advertised at his Job Centre. The respondent was advertising for two jobs including a chef position.

28. The claimant attended an interview for the job on 6 June 2023. The claimant brought his dyslexia assessment with him to the interview and offered this to the respondent at the interview. He was not successful and was not offered the job. However, after conduct related issues with another chef, Lance Brown

(General Manager of the Rushbrooke Arms) contacted the claimant on 9 September 2023 asking if he was still looking for work and inviting him for a chat.

29. The claimant met with James Pope (Kitchen Manager at the Rushbrooke Arms) on 11 September 2023. The claimant mentioned his dyslexia and said that he could not read or write. Mr Pope said this would not be a problem and offered him the job to start in 2 weeks "*once all the relevant paperwork was done*". It is clear from this last comment that the claimant understood that there would be paperwork to sort out (including a contract of employment)

30. The claimant had a further discussion with James Pope at the pub on 19 September 2023. At the meeting, the claimant explained his family situation to Mr Pope. The claimant's granddaughter lives with him under a special guardianship order. At the time, the claimant's granddaughter was in nursery for mornings only. There was a discussion about working hours and childcare. The claimant said to Mr Pope that he could ask the nursey to look after his granddaughter for more hours each day to free up more time for him to work. Mr Pope asked the claimant how many hours a week he wanted to work if he was to put his granddaughter into nursey full time. The claimant said 40 hours per week. In response, Mr Pope said that the claimant would start at 32 hours per week and see how he got on. Based on this discussion, the claimant and his wife made arrangements for a nursery to look after his granddaughter on a full time basis. The claimant's granddaughter was already in nursery for mornings only. When the existing nursey could not accommodate additional hours, the claimant and his wife found an alternative nursery who could accommodate the extra hours. The claimant's granddaughter moved nurseries.

31. We accept the claimant's evidence as to his discussion with Mr Pope. However, there was no clear agreement between the two men with regard to working hours. All that was agreed was that the claimant would start on 32 hours "and see how he got on". The claimant came away from the meeting thinking that he would be working about 32 hours per week. However, This was not a binding or sufficiently certain agreement. It was not a binding contractual agreement to the effect that there was a minimum number of hours per week.

32. We also find on the evidence that the claimant was not told that his employment would be for a fixed term. We accept the claimant's evidence in this regard.

33. The agreement between the parties at this point was somewhat loose and imprecise. They had agreed that the claimant would work for the respondent as a Chef at the Rushbrooke Arms. They had agreed that the claimant would start on 32 hours and see how things worked out. No specific terms had been agreed.

34. A written contract of employment was prepared by the respondent. The claimant never signed it. We accept the respondent's evidence that they expected their employees to deal with HR issues, pay and training etc. through a series of online apps. The relevant app was set up so that after the employee installed it and first logged on to the app they would be given a link

to a PDF version of their contract so that they could review it. They were then asked to click a box to confirm that they had read and agreed to the contract of employment. We accept the respondent's evidence that the app was set up so that the employee could not access much of the functionality of the app without first accepting the terms of the contract. The claimant ticked the box on the app to agree to the terms of his contract. However, he did not read the contract first. Furthermore, he was unable to read it because of his dyslexia. He was also unable to read the wording which informed him that by clicking in the relevant box, he was agreeing to the terms of his contract. The claimant often relied on his wife to assist with documents. However, at the time she was not available to assist him. The claimant was excited about the prospect of a new job. He was clearly daunted and somewhat panicked by trying to deal with the app and was clicking on whatever was necessary to progress. We accept his evidence that he did not and could not read the text next to the box that he ticked to confirm he was agreeing with his contract.

35. The terms of the written contract included the following relevant terms:

    (a) The contract was for a fixed term. It provided for the claimant's employment to begin on 15 September 2023 and to end on 5 January 2024 without the need for notice (unless it was terminated earlier by either party); and
    (b) The claimant's pay was £11.20 per hour;
    (c) The claimant would be paid only for "the hours recorded in accordance with the Company's procedures for recording hours". He would be paid in arrears every four weeks by bank transfer;
    (d) The claimant would have no normal hours of work. His working hours would vary each week depending on the respondent's requirements. The contract stated "*as an indication we anticipate you working 8 hours per week, However your actual working hours may vary up or down on a week by week basis. The number of hours per week you are offered will depend upon business requirements ….*"
    (e) The claimant was entitled to the equivalent of 5.6 weeks paid holiday during each holiday year;
    (f) the respondent's holiday year ran between 1st March and the last day of February each year;
    (g) on termination of employment, the respondent would pay the claimant in lieu of any accrued but untaken holiday for the holiday year in which termination took place. The amount of the payment in lieu was to be based on the hours worked averaged over a 52-week reference period.

36. The claimant began employment on 15 September 2023. However, he worked his first shift at the Rushbrooke Arms on Monday 25 September 2023. He worked 24.06 hours over the seven days to Sunday 1 October 2023. He was scheduled to work 32 hours that week but missed some work through illness.

37. Given the respondent's concessions regarding the claimant's disability discrimination claim, we need not make detailed findings about the events giving rise to that claim. However, in brief:

38. The claimant was asked to undertake his onboarding health and safety assessments. He relied on assistance from his wife to complete the

mandatory learning, completing 6 modules over a week and a half.

39. Lance Brown spoke to the claimant about his progress at the end of his shift on 1 October. The claimant had worked for one week by this stage. Mr Brown told the claimant words to the effect of "*you have had good feedback from the other chefs, they say you're a grafter, asked a couple of questions, but put your head down and got on with the job so we can't fault your work ethic, the only issue we have is your reading, because you can't read the orders on the screen in the kitchen, you are going to struggle*". Mr. Brown went on to describe the difficulties that might occur and asked the claimant if he could think of something that might help and come up with a reasonable adjustment. Mr. Brown concluded by saying "*if we can't come up with a reasonable adjustment then we will have to lay you off*".

40. The claimant responded to Mr. Brown the same day by suggesting the use of a Bluetooth earpiece that connects to the respondent's computer, and relays the information on screen orally via the headset.

41. On 3rd October 2023, the claimant sent an e-mail to Emma Posey (Employee Relations Advisor) in which he raised a grievance.

42. The claimant did not undertake any shifts at the Rushbrooke Arms after 1 October 2023. The respondent took him off the rota as he had not completed all his online training.

43. The respondent made a referral to Occupational Health (OH) advisors for a workplace assessment. A written OH report was prepared on 25th October 2023. The report identified a wireless headset as a potential adjustment to accommodate the claimant's difficulties.

44. Two meetings took place in November 2023 to try to resolve matters. This was not successful.

45. The evidence as to when the claimant's employment ended was unclear. It is common ground that at some point after the meetings in November, Cassie Hunt left a message for the claimant on his phone. In that message she explained that as the respondent had been unable to find a way forward they could not continue with the claimant's contract. The claimant accepted that the message had been left. However, there was no clarity as to when this happened. From the statement of Cassie Hunt, it appears likely that it was on or about 23rd November 2023. It is on this date that the claimant's employment ended. The claimant had been employed by the respondent for a total of 10 weeks from 15 September to 23 November 2023.

46. The claimant was paid by the respondent as follows:

    (a) On 20 October 2023 he was paid at a rate of £11.20 per hour for the 24.07 hours worked in the week commencing 25 September 2025;
    (b) On 17 November 2025 he was paid for a further 56 hours at a rate of £11.20 per hour. This was 7 weeks' pay at a notional rate of 8 hours per week (i.e. 7 weeks x 8 hours = 56);
    (c) He was paid a further 32 hours (i.e. 4 weeks x 8 hours = 32) by bank transfer into his account on 12 April 2024.

47. The claimant was therefore paid for a total of 112.07 hours. This was a combination of:
    (a) pay for the hours worked by the claimant (i.e., his work in the week beginning Monday 25th September 2023); and
    (b) notional pay at a rate of eight hours per week for the period which the claimant was employed but not actually attending work.

48. The respondent made a payment of holiday pay to the claimant based on the calculation set out at pages 57 and 58 of the hearing bundle.

49. At the time the claimant was employed and immediately thereafter there was a staff shortage at the Rushbrooke Arms. The pub was described as a "*heavy food site"* and *"far heavier than most pubs within the business*." The kitchen staff were struggling to operate at full capacity because of staff shortages. For example, Mr. Brown as General Manager had to step in and spend up to four hours of his working day in the kitchen on the dessert section.

50. They respondent had taken on a new employee in the kitchen in a similar role to the claimant. His name was Mr. Fenner. Mr. Fenner started employment with the respondent on 4th October 2023. He had worked for the respondent before at the Rushbrooke Arms. We do not accept the claimant's contention that that Mr. Fenner was recruited to replace the claimant. Although Mr. Fenner started employment shortly after the claimant stopped working on 1 October, the claimant was still employed at this stage and no decision had been made to terminate his employment. Furthermore, there was a "lead in time." The recruitment of Mr. Fenner would have been arranged some time before he started work.

51. In January 2024, soon after the claimant had left the respondent's employment, Mr. Flint made Mr. Fenner's position permanent, employing him on an indefinite term contract under which it was anticipated that he would work for 42 hours per week.

52. The respondent's failure to make reasonable adjustments resulted in the claimant's employment ending. Had those adjustments been made the claimant would have remained in employment. It is highly likely that the adjustments would have enabled him to retain the job given Mr. Brown's very positive assessment of his work capabilities.

53. The discrimination experienced by the claimant took its toll on him. It is often helpful to evaluate that toll by comparing how the claimant was before the discrimination compared to how he was after it. It is fair to say that the claimant was not in a good state psychologically before he secured employment with the respondent. He described himself at that time as being under confident, suffering from anxiety and depression and suicidal thoughts. However, his state of mind improved when he secured the job with the respondent. He was plainly excited and positive about returning to the workplace.

54. After the discrimination from the respondent, the claimant's state of mind took a significant turn for the worse. The way the respondent treated him made the claimant feel worthless, humiliated, suicidal and anxious particularly as he knew he was going to be jobless once again. As the claimant put it he was

"*sick and tired of explaining myself*" to companies who interviewed him. Losing another job caused his mental state to deteriorate. He visited his GP and was prescribed medication for his anxiety. The claimant had taken the medication before but had stopped taking it before securing employment with the respondent. Since then, the claimant has regularly had suicidal feelings and his relationship with his wife has suffered.

Conclusions and applicable law

55. Taking each claim in turn, we set out our conclusions.

Unauthorised Deductions from Wages

56. The tribunal's jurisdiction to determine a claim for unauthorised deductions from wages arises under the Employment Rights Act 1996 (ERA). Section 13 ERA gives workers the right not to suffer unauthorised deductions from their wages. Section 23 ERA gives the tribunal jurisdiction to determine a complaint of unauthorised deductions.

57. There is no dispute that the claimant has the right to bring a complaint of unauthorised deductions from his wages or that the claim was presented in time.

58. The claim concerns the wages paid to the claimant for the period of his employment. For some of this period, the claimant attended work and so his working hours are recorded. However, for most of the period, the claimant was not actually working and has been paid based on the respondent's view of his notional contractual hours. This was in the period while the parties were seeking to resolve their differences.

59. The difference between the parties is a simple one:

    (a) The claimant says that it was agreed (and was therefore a term of his contract) that he would work for no less than 32 hours per week. He says that the wages payable to him should be based on the actual hours worked in the short period when he attended work and a notional 32 hours per week thereafter; and

    (b) The respondent says it was a term of the claimant's contract that he would not be guaranteed any hours per week and it was merely anticipated that he would work 8 hours per week. The respondent says that the calculation of wages should be based on no more than 8 hours per week.

60. The key issue for the tribunal to determine is - what were the terms of the claimant's contract of employment? Was he guaranteed minimum working hours? If so, was he guaranteed either 8 hours or 32 hours per week?

61. No binding terms regarding working hours were agreed verbally at the meeting between Mr. Pope and the claimant on 19 September 2023. There was a discussion about working hours. However, even on the claimant's evidence there was no firm agreement under which they respondent was committed to provide the claimant with a minimum number of working hours.

The agreement was nothing more than an agreement as to how many hours the claimant would work when he first started and that the parties would then take things from there. The discussion and agreement lacked sufficient certainty.

62. We also find that the claimant was not bound by the terms of the written contract of employment notwithstanding the fact that he clicked the box on the respondent's app to purportedly agree to the terms. Mr. Varnham for the respondent quite properly referred us to the Court of Appeal decision in the case of *Hambros Bank Limited v British Historic Buildings Trust [1995].* In that case the Court of Appeal referred with approval to a proposition drawn from the case of *Schwartz v Barclays Bank* in which LJ Millett said the following of a person who was unable to read or who was unfamiliar with English:

"[he] knows that he cannot read; a man who is unfamiliar with English is aware of this fact. If he signs a document which he does not understand he has only himself to blame".

63. This supports the proposition that it should not be open to the claimant to argue that he is not bound by the terms of his contract in circumstances where he agreed to the terms. Mr. Varnam also quite properly highlighted to us that there are examples of employment cases in which the more orthodox contractual principles have been relaxed somewhat an employment context. He referred for example to *Autoclenz v Belcher [2011]*.

64. We conclude that the claimant was not bound by the terms of the written contract. Factually, the claimant's situation was very different to that of Mr. Din in the *Hambros* case. Mr. Din found himself in a situation where he had a pen in his hand and a document in front of him which he was being asked to sign. He knew that he was signing a binding contract. He knew that he had not read or understood the terms of the contract and yet he signed nevertheless. In contrast, the claimant's situation was very different. He had made the respondent aware that he could not read. He clicked a box in an app without being able to read the text and without knowing that in doing so he was agreeing to the terms of a contract of employment. He was simply doing his best to try to navigate through an unfamiliar app in a situation where he was unable to read because of his dyslexia.

65. In the Hambros case, Mr. Din raised an argument of non est factum (i.e., the document he signed was void in the circumstances). We find that the essential requirements of the non est factum doctrine are all present in the claimant's case. In particular:

(a) He had a disability (dyslexia) and was unable to read the contract and the text next to the tick box;
(b) The document that he was asked to agree to was fundamentally or radically different from the terms that he had understood would apply. For example, he had understood that he would have a 32-hour working week whereas the document provided for no guaranteed hours. Furthermore, the written contract was for a short, fixed term. This had not been discussed or agreed with the claimant who was under the impression that it would be an indefinite term contract;
(c) Thirdly, he had taken proper care in the circumstances. Had the

claimant understood that by ticking the box he was accepting the terms of a contract, he would plainly not have taken sufficient care. In those circumstances he should have asked for the contract to be explained to him either by his wife or by the respondent. However, the claimant did not appreciate this because of his inability to read. The claimant had informed the respondent of his dyslexia and his inability to read. They had sent him the details to log into the app. They had not alerted him to the fact that the app would be used to agree the terms of his contract. He merely thought that he was clicking through to access further material, not knowing that he was purportedly agreeing the terms of a contract.

66. It follows from these conclusions that the parties had an incomplete or imperfect agreement. They had agreed that the claimant would work for the respondent at the Rushbrooke Arms in the role of chef. However, they had not reached any firm agreement on any of the essential terms of the contract. This is fatal to the claimant's case for unpaid wages. He has the burden of proving that the term of his contract were such that that he was guaranteed a minimum of 32 hours work each week. He has not discharged that burden and so his claim for unpaid wages fails.

Holiday Pay

67. There are two possible routes to a successful holiday pay claim in these circumstances. Taking these in turn:

    (a) the first possibility is if the claimant can demonstrate an entitlement to be paid holiday pay under the terms of his contract of employment. The respondent's written contract included a provision for payment for holiday pay on termination of employment. Those terms would potentially have amounted to a "relevant agreement" for the purposes of the Working Time Regulations 1998. However, we have found that the terms of the written contract were not binding and therefore they are not applicable.

    (b) In the absence of a written contract (or a binding written contract) the mechanism for assessing holiday pay the Working Time Regulations 1998 is applicable. Under Regulation 14 the claimant had a right to be paid for a holiday he had accrued but not taken as at the date of termination of his employment. The mechanism for calculating such payments is set out in Regulation 14(3) as:

$$(A \times B) - C$$

68. The three relevant figures are:

    (a) "A" is 5.6 weeks per year (i.e. the claimant's total annual statutory holiday entitlement);

    (b) "B" is 70/365 given that the claimant's period of employment was 70 days out of a full year of 365 days;

    (c) "C" is nil given that the claimant took no paid holiday during his period

of employment.

69. Applying the formula in Regulation 14 gives the claimant an entitlement to accrued holiday pay of 1.07 weeks calculated as follows:

(5.6 x 70/365) – nil = 1.07 weeks

70. The claimant was therefore entitled to receive a payment of accrued holiday pay in respect of 1.07 week's pay.

71. According to Regulation 14(3)(b) the payment of holiday pay to be made under Regulation 14 should be calculated according to Regulation 16. Regulation 16 requires payment of "*a weeks pay*" for each week of accrued holiday entitlement.

72. A 'week's pay' for these purposes is to be calculated in accordance with sections 221 to 224 Employment Rights Act 1996 (ERA).

73. We have found that the claimant had no normal working hours and so section 224 ERA applies as follows:

224 Employments with no normal working hours.

(1)This section applies where there are no normal working hours for the employee when employed under the contract of employment in force on the calculation date.

(2)The amount of a week's pay is the amount of the employee's average weekly remuneration in the period of twelve weeks ending—

(a)where the calculation date is the last day of a week, with that week, and

(b)otherwise, with the last complete week before the calculation date.

74. The reference period has subsequently been extended to 52 weeks. However, that is not relevant here as the claimant's period of employment is only 10 weeks.

75. The calculation date is the date on which the claimant's employment ended (as holiday pay is due then). At that date, the claimant had been employed for 10 weeks and had worked only 24.06 hours in that period. This gives "a weeks pay" equivalent to only 2.4 hours per week averaged over 10 weeks. The claimant's weekly pay for these purposes is only £26.88 per week (i.e. 2.4 hours per week x £11.20 per hour = £26.88 per week). Multiplying that by the 1.07 weeks gives the claimant an entitlement to £28.76 of accrued holiday pay. The respondent has paid more than this sum. Therefore, no further payment is due. The claim for holiday pay is not successful.

Disability Discrimination (failure to make reasonable adjustments)

76. The respondent concedes that the claimant was a disabled person at the material time within the meaning of section 6 Equality Act 2010 (EQA) because he had dyslexia. The respondent concedes that it unlawfully

discriminated against the claimant by failing to comply with the duty under sections 20 and 21 EQA to make reasonable adjustments in the ways alleged by the claimant.

Power to award remedies

77. Section 124 EQA sets out the tribunal's power to award remedy in a successful discrimination complaint:

124 Remedies: general

(1)This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).
(2)The tribunal may—
(a)make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
(b)order the respondent to pay compensation to the complainant;
(c)make an appropriate recommendation.

Declaration/recommendations

78. We will make a declaration in the claimant's favour.

79. The claimant does not invite us to make any recommendations.

Compensation: General Principles

80. Section 124(6) EQA requires us to consider compensation in accordance with s119 EQA.

81. The aim is, as far as money can, to put the claimant into the position he would have been in but for the unlawful conduct.

82. The claimant is unrepresented. His schedule of loss is modest. It doesn't reflect all the losses that would be claimed if he had been professionally advised. Fairness dictates that we assess the losses on a just and equitable basis which may require us to go beyond the modest losses claimed by the claimant in his schedule of loss.

83. When making any award of compensation, there is a need to focus on compensating the claimant rather than on punishing the wrongdoer.

84. The onus remains on the claimant to establish the nature and extent of such injury.

85. Tribunals must ascertain the position that the claimant would have been in had the discrimination not occurred. Another way of looking at it is to ask what loss has been caused by the discrimination in question. The issue of causation entails tribunals speculating about what would have happened.

86. The so called "egg shell skull" principle is relevant here. The principle is expressed by saying that the discriminator must take the victim as he or she finds him or her. If the victim is unusually vulnerable, and the level of damage

is greater than it would have been for another individual, the discriminator will be liable for the full extent of the damage, as long as it flowed from the act of discrimination. The eggshell skull principle also applies to the duty to mitigate. In other words, in considering the respondent's contention that the claimant has failed to take reasonable steps to mitigate his loss, we should take into account the claimant's pre-existing vulnerabilities when considering what was and was not reasonable.

Compensation: Injury to Feelings

87. Guidance is given to tribunals in assessing compensation for injury to feelings by setting three bands of severity. These are the so called "Vento bands". The Vento bands have been increased from time to time to reflect the effect of inflation and other changes.

88. In respect of claims presented on or after 6 April 2023, the Vento bands are as set out in the sixth addendum to the Presidential Guidance originally issued by the President of the Employment Tribunal on 5th September 2017 and are as follows:

    (a) A lower band of £1,100 to £11,200 (less serious cases);
    (b) a middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band);
    (c) and an upper band of £33,700 to £56,200 (the most serious cases), with the most exceptional cases capable of exceeding £56,200.

89. The respondent submits that the appropriate award should be at the upper end of the lower band and says that the appropriate award should be £10,000. In closing submissions, the claimant agreed with this.

90. We heard evidence from the claimant regarding the injury to his feelings attributable to the failure to make reasonable adjustments. We refer to our earlier findings.

91. We take a slightly different view to the parties. We consider that the appropriate Vento band is the bottom end of middle bracket.

92. Taking into account the injury to the claimant's feelings as set out above, we assess the appropriate sum as £12,000.

Compensation: Financial Losses

93. We also award compensation for financial losses attributable to discrimination.

94. We deal first with the claim for nursery fees. The claimant has claimed the sum of approximately £1700 to reflect the nursery fees he incurred during his employment. This is claimed on basis that he incurred these fees only because he was led by Mr. Pope to believe that he would be guaranteed minimum working hours of 32 hours per week.

95. The evidence of the claimant's wife was that the claimant's granddaughter was in nursery for mornings only before the claimant took the job with the

respondent. No fees were incurred for this as the number of hours was within the government funded limit. However, after increasing nursery provision to full days, the cost to claimant and his wife was £195 per week.

96. There is no basis for making such an award. The loss was not caused by any discriminatory act. Furthermore, there is no contractual entitlement to payment.

97. There is no basis for including the nursery charges in calculating future losses either. The aim is to put the claimant in the position he would have been in, so far as possible, had his employment continued. If the claimant had remained in employment he would have received pay from the respondent and would have paid the nursery from that pay. Each month he would have been better off to the extent of his pay less the nursery fees. He would never have been in a position where he received both his pay for his work and the childcare expenses on top. To award compensation for nursery fees would be to put the claimant in better position. No award is made.

Period of Loss/Mitigation of Loss

98. As regards financial losses, these comprise of loss of earnings. The starting point is to determine in what position the claimant would have been had the discrimination not occurred. Would he still be employed by the respondent had reasonable adjustments been made?

99. If reasonable adjustments were made, there would have been a very good chance of the claimant staying in the respondent's employment. He had a strong work ethic. He was perceived by Mr. Brown to be a hard worker. The respondent had a need for staff at the time. The adjustments sought by the claimant are very likely to have resulted in him remaining in the respondent's employment.

100. The claimant has not found another job. He stopped looking for work after making about 13 job applications after his employment with the respondent ended. He points to the events with the respondent having happened with his last three employers. He described feeling worthless and doesn't want to go through the same process again. He anticipates that his only chance of returning to the workplace is to become self-employed and to start his own business. He has yet to take any steps to pursue this.

101. Whilst we accept that the claimant is vulnerable and would need some time before starting to search for work again, we consider that it would be reasonable for him to have continued to search for work or to explore becoming self-employed. The claimant has not done so. He had enjoyed success in the past when actively seeking work. Had he done so, we anticipate that he would have found alternative work within 18 months of his employment with the respondent ending. For these reasons, the period for which we award loss of earnings is limited to 18 months.

102. We have very limited evidence as to what the claimant's working hours would have been in that 18 month period. The work was likely to be subject to seasonal peaks and troughs. For example the pre-Christmas period was likely to have been very busy. In contrast, the post New Year period was likely to

be very quiet. Furthermore, the claimant's working hours were likely to have been diluted in circumstances where both he and Mr Fenner were kept on. Approximately 24 hours per week on average is a reasonable conclusion.

103. The claimant was paid £269.58 for a 24.07 hour week and also received a tronc payment of a further £4.24. This gives £273.83 per week (gross).

104. An 18 month period of loss is 78 weeks. 78 weeks x £273.83 = £21,358.74. This is the total gross loss in 18 months.

105. This is however, the gross loss. The figures should be calculated on the basis of net income to assess the claimant's actual loss (i.e. after tax and National Insurance (NI) payments are deducted).

£273.83 (gross) per week is equivalent to £14,239.16 (gross) per annum. The net equivalent is calculated as follows:

Gross annual pay: £14,239.16
Less NI payable £192.00
Less Inc tax payable: £334.00
Gives take home pay: £13,713.16 per annum (= net pay of £263.71 per week)

106. This is equivalent to a net payment of £263.71 per week.

107. Multiplying this by the 78 week period of loss gives a total net loss for 18 month period of £263.71 x 78 weeks = £20,569.38.

108. The claimant would however, have incurred child care costs of £195 per week for about 40 of those weeks until his granddaughter began school in September 2024. The cost incurred is £195 per week x 40 weeks = £7800. This expenditure is calculated to the end of August 2024 as the claimant's granddaughter started school after that and the childcare costs ended.

109. Thus, the net loss after deducting child care expenses is:

£20,569.38 less £7800 = £12,769.38

110. We reduce this award to reflect the chances of the claimant's employment having ended before the 18 months period ended. We assess the chance of that happening as low (i.e. 25%). This gives a chance of staying of 75%

111. A 25% reduction to the £12,769.38 figure gives reduced figure of £9,577.04 for past loss of earnings.

Interest

112. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803 give employment tribunals the power to award interest on awards made in discrimination cases. Under Regulation 2(1) a tribunal is required to consider whether to award interest even if the claimant does not specifically apply for it.

113. Interest is calculated under Regulation 3. The applicable rate is 8% per annum

of simple interest.

114. For interest on the award for injury to feelings, interest runs from the date of the act of discrimination and ends on the day the tribunal calculates the award (Regulation 6(1)(a)). Here the date of act of discrimination is the date the respondent was reasonably expected to make the reasonable adjustments (say 23 November 2023). The date of calculation is 12 September 2025. The number of days in the period between these dates is 660 days.

115. This gives a calculation as follows:

£12,000 @ 8% = £960 per annum. Divide by 365 days = £2.63 per day x 660 days = £1,735.89

116. Interest on other sums (i.e. loss of earnings sum excluding injury to feelings) is awarded from the period beginning at the "mid-point" of the same 660 day period. This gives an award of interest for a 330 day period calculated as follows:

£9,577.04 @ 8% = £766.16 per annum. Divide by 365 days = £2.10 per day x 330 days = £692.70

117. There is no need to gross up the figures as the total award is below the £30,000 tax free threshold.

Approved by Employment Judge:
Mr. A Spencer

Date: 19th September 2025

Written Reasons sent to the parties on

29 September 2025

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For the Tribunal office