



EMPLOYMENT TRIBUNALS

Claimant: Mr Abdul Karim

Respondent: Secretary of State for Justice

Heard at: Watford Employment Tribunal

On: 29-30 April & 1 May 2025, 2 May, 4-5 August (deliberations), 6 August 2025

Before: Employment Judge Young

Non- Legal Members: J Hancock
I Sood

Representation

Claimant: Ms Kara Loraine (Counsel)

Respondent: Mr Richard McLean (Counsel)

JUDGMENT of Employment Judge Young having been sent to the parties on 10 September 2025. Written reasons having been requested by the Claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The Claimant was employed by the Respondent, Her Majesty's Prison Service at Pentonville Prison, as an Operational Grade, from 2 February 2002 until 9 August 2023. Early conciliation started on 10 December 2023 and ended on 12 December 2023. The claim form was presented on 12 December 2023.

Hearing

2. The Employment Tribunal received the bundle of 265 pages with an index included. The Claimant provided 1 written witness statement of his evidence, and the Respondent provided 2 witness statements. We heard evidence from the Claimant, at the relevant time, Governing Governor Ian Blakeman who was the dismissing officer and Ms Tracy Ansell, at the relevant time HR case manager who attended the Claimant's appeal.

3. On day 1 Tuesday 29 April 2025, the Claimant produced 2 additional documents to be added to the bundle of a printout from the internet of "How much does paper weigh", which was labelled page 266 and an HSE document titled "manual handling at work" which was labelled pages 267-282. However, the Employment Tribunal pointed out that the Claimant's schedule of loss was not in the bundle. The Employment Tribunal requested payslips from August-October 2023 as the November-December 2023 payslips were already in the bundle. The Respondent provided those payslips before the start of evidence and they were labelled pages 282-285.
4. On day 2, the Employment Tribunal asked the parties for a copy of the Claimant's contract of employment. However, the Respondent was not able to obtain the contract of employment or any templates. Mr McLean said that the templates were not useful as they were specific to the employees. The Claimant could not find a copy of his contract of employment. The Claimant completed his evidence by 13:00. After the lunchtime adjournment both the Respondent and Claimant agreed as a fact that it was agreed that the Claimant's notice pay amounted to 13 weeks' pay.
5. Ms Loraine confirmed that the Claimant was not asserting a statutory right to notice but only a contractual entitlement. Ms Loraine confirmed that there was no unlawful deduction of wages complaint before the Employment Tribunal. Mr McLean agreed that Ian Blakeman did say that the Claimant would be paid 13 weeks' pay in lieu of notice in the dismissal letter. Mr McClean confirmed that there was an agreed fact that the Claimant's dismissal took place on 9 August 2023.
6. After that discussion, Ms Loraine took instructions and made an application to amend the Claimant's claim to include an unlawful deductions of wages complaint. The Employment Tribunal heard the application and refused it. Oral reasons were given at the time and will not be repeated here.
7. On day 3, Ms Loraine said the Claimant's position regarding the agreement to pay the Claimant in the dismissal letter was that it wasn't paid. Then she said that the Claimant's OSG contract has been sent to the Employment Tribunal. However, Mr Mclean said the Respondent does not have the contract, and it had not been received from the Claimant's solicitors. The Employment Tribunal never received the OSG contract, and it was not referred to during the rest of the proceedings. After the lunchtime adjournment, the Employment Tribunal gave directions for a remedies hearing to be heard on 6 August if the Claimant was successful. Ms Loraine said that there would need to be a remedies bundle. Mr McLean said that the Respondent did not have any more documents to add. The parties were directed to provide disclosure for additional remedy documents 6 weeks before 6 August, and the Claimant was to provide an agreed remedies bundle 4 weeks before 6 August 2025.
8. After hearing evidence, we heard oral submissions from the parties. In summary, the Respondent said that the Claimant's claims should be dismissed. Ian Blakeman gave careful, consistent evidence. The Claimant was not convincing as he sought to reframe his own work and action. The Respondent accepted that the disabilities were mental health and the

Claimant's back. In respect of the section 15 claim, it was accepted that the absence was something in consequence of his disability. The earlier absences were more of a patchwork; some earlier absences did not relate to the Claimant's disability. But even if the dismissal and appeal are discriminatory, there was a legitimate aim justification. The legitimate aim was conceded of sorts in the ET1 at paragraph 26, [20] and the aim was made out on the evidence.

9. On the question of was the treatment connected to achieving those aims, Mr McLean argued that the Claimant had been on restricted duties on and off, exceeding the 13 weeks/ 3 months limit. The Claimant was unable to return to full contractual duties [75, 98, 143]. The Claimant was still unable to carry out the role, so the Respondent had to be fair to other staff. The Claimant had tried to say that the dismissal was predetermined, and the line manager was out to get him and against him it was not the case. It was Ian Blakeman's decision and he was above influence from Jerry Darko, and he was not aware of the issues of Claimant with his line manager. Ian Blakeman's finger was on the pulse at the prison and he was not a broad-brush governor; but a governor in tune with what was going on. It was a reasonable adjustment based upon the information available including what the Claimant was able to provide. The Respondent behaved proportionately and went beyond the 3 month period for restricted duties. It also considered regrading. The job was particularly onerous for the Claimant, even the trolleys required lifting. There was no change to the Claimant's health condition and no new information was produced in the appeal. The treatment was proportionate. Whilst dismissal is a serious step, it has to be balanced against the length of time to continue to employ the Claimant, who could not do his full duties. There was also the uncertainty of the Claimant's capability even in adjusted roles. The Claimant was not fit to work in any capacity. There was an operational impact (as duties must be covered at all times). The Claimant lacked a proactive proposal of how to return to work. All he said was that he could do the grade 2 role at a slower pace. The dismissal was fair. It is very important to remember that the Claimant had a choice of what to do. The Employment Tribunal has an indication of advice given by the Claimant's POA's representative advising him to take the step. The appeal process was procedurally sound. In respect of the breach of contract claim, the money was due when the Claimant was dismissed, he checked his balance, should have reasonably known the clock started ticking, and so there is no reason to extend time.
10. The Claimant's submissions in summary were that Ian Blakeman's evidence was not credible, but the Claimant does not say that he wholly lacked credibility. There was a lack of transparency in the information prior to the meeting. The Claimant believed that his managers were out to get him and were bullying him. We were not provided with meeting notes between April 2023- August 2023. It is concerning in light of enquiries made before the first warning. There is evidence that supports that. Ian Blakeman could have been more transparent. He couldn't explain what documents he looked at. We found out for the first time he had a meeting with Governor Odejemi before 9/8 and there was no minutes in respect of minuting 23/6 meeting. There was a complaint about bullying he doesn't enquire what happened in that meeting. His evidence that he didn't want to get rid of the Claimant was lacking. There were times he appeared to tailor his evidence

to the Respondent's case, details of the OMU role was not in the witness statement and there were no documents. He said for the first time it wouldn't have been a reasonable adjustments to offer him that job. The Claimant had 20 years of experience and he knew he could have done it.

11. In respect of the time limits, it was not possible for the Claimant to articulate a claim until November. HR are not the decision makers, Mr Blakeman is. It is not until the end of October that he knows. It was a short period and not enough time for it to be reasonably practicable. In that context of him having mental health issues, a week is not enough time he brought it at the earliest time. We know that he didn't wait the matter was with his solicitors, it is a reasonable further period. The claim was submitted within 6 weeks of the time limit.
12. Dealing with the Section 15 claim, the appeal brings dismissal in time as it is a continuing act. It is part of the same process it is determined in lockstep so closely connected that they must be viewed as a continuing act. Proportionality is a key issue, it is for the Respondent to prove, it is an evidential burden that the Respondent holds access to. We do not have any documentation. It is an example of ableism i.e. I am not going to do reasonable adjustments because it is too difficult without any investigation of the facts and cost or impact; no distinction was drawn. We know he could have done the role because he did do it. Alternatively regrading was an option, and the evidence was that he would have offered the Claimant the role. It was a fait accompli, he was presented with only one option. There is no reason why Mr Bickers could not have offered him an alternative. It was wholly disproportionate to not have offered the Claimant the alternative role.

Claims & Issues

13. The list of issues were set out in EJ Quill's order dated 24 June 2024. However, during the hearing, the Claimant and Respondent agreed facts pursuant to the issues of disability and breach of contract and so those agreed facts are reflected in the list below.

1 Jurisdiction

1.1 Has the Claimant's claim for disability discrimination been brought within the three month time limit prescribed under section 123 of the Equality Act 2010?

1.2 If not, is it just and equitable to extend time for that claim pursuant to section 123 of the Equality Act 2010?

1.3 Has the Claimant's claim for notice pay been brought within the three-month time limit prescribed under section 23 of the Employment Rights Act 1996?

1.4 If not, would it have been reasonably practicable for the Claimant to present their claim within the prescribed time limit? If it was not reasonably practicable for the Claimant to do so, was the Claimant's claim brought within such further period as was reasonable?

2 Disability

It had been agreed that the Claimant was disabled at the material time by virtue of his spinal pain and stress/anxiety.

3 Discrimination arising from disability – section 15 Equality Act 2010

3.1 The Claimant relies on the following things as each being something arising in consequence of the Claimant's:

3.1.1 Absence from work from April 2023 to date of dismissal

3.1.2 Earlier absence from work.

3.1.3 Inability to work 37 hours per week and/or the need to work no more than 32 hours per week

3.1.4 Manual handling restrictions, in particular inability to not lift items greater than 10kg.

3.2 The Claimant relies on each of the following things as being treated "unfavourably" because of one or more of the "something" mentioned in previous paragraph.

3.2.1 Dismissal on or around 9 August 2023

3.2.2 Rejection of appeal against dismissal on or around 21 September 2023

4 Notice Pay / Wrongful Dismissal

The parties agreed that the Claimant was dismissed on 9 August 2023 and that there was an agreement on 9 August 2021 that the Respondent pay the Claimant 13 weeks at full pay in lieu of notice.

5 Remedy

5.1 If the Claimant succeeds in a disability discrimination claim, is the Claimant entitled to an award for injury to feelings? How much should that be taking account of, for example, the guidelines set out in *Vento v Chief Constable of West Yorkshire Police (No 2)* [2003] IRLR 102?

5.2 Has the Claimant also suffered any financial losses from any discrimination that is found to have taken place? If so, has the Claimant taken reasonable steps to mitigate their loss? What amount should be awarded?

5.3 Should interest be awarded on the EQA compensation? If so, it will be at 8% per annum for the appropriate period(s).

5.3 What award, if any, should be made for the breach of contract claim?

Findings of Facts

14. We make these findings of fact on a balance of probabilities. Only findings of fact relevant to the issues, and those necessary for the Tribunal to determine 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. The Tribunal has not referred to every document it read and/or was taken to in the findings below, but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.
15. References to numbers in square brackets are a reference to the bundle page numbers.
16. We found the Claimant to be doing his best to tell the truth. The Claimant did appear to contradict himself on occasion, and the documentation demonstrated that the Claimant did exaggerate about his health condition at various points to Occupational Health. We considered the Claimant's evidence as not entirely reliable but not because we considered that the Claimant intentionally sought to mislead the Employment Tribunal. We had regard to the Equal Treatment Bench Book in respect of the Claimant's disabilities. We found Ian Blakeman to be a credible witness whose evidence was helpful, but Ms Ansell's evidence was not as helpful as we would have hoped it to be.
17. The Claimant started working for the Respondent initially as an Escort. The Claimant has had many different roles in the Respondent, and by 2021, the Claimant was undertaking the role of an OSG at Pentonville Prison. The Claimant had a history of stress and anxiety for many years and a history of reactive depression [226]. The Claimant had also been suffering from back pain since the early 2000s and was diagnosed with Spinal Stenosis. It was not until 2020 that the Claimant began to take more time off from work for sickness. From 17-22 November 2020, the Claimant was signed off as not fit for work due to migraines and stress [227]. The Claimant was signed off again this time due to rigours, insomnia and night sweats from 23 November 2020 until 21 February 2021 [228, 230 and 231]. The Claimant was then off sick for periods throughout 2021. The initial period was from 22 February- 22 March 2021, when the Claimant was off work for night sweats, mixed anxiety and depression and urological pain [232]. Then the Claimant was issued with a GP's sick note dated 16 June 2021, which advised the employer that the Claimant could not lift, bend or carry heavy things for at least 2 months [234]. However, the reason the Claimant was off work on this occasion was recorded as shoulder pain and atypical chest pain. The GP sick note stated that the Claimant may be fit to work, taking into account the recommended adjustments of altered hours, amended duties and workplace adaptations. However, there was no further detail regarding the proposed adjustments. Notwithstanding, the Claimant was not referred to occupational health. The Claimant's evidence was no adjustments were made at that point.

18. Another sick note was issued for 6 months in relation to low back pain (chronic back pain) on 22 July 2021.[235] The sick note recommended the Claimant may be fit for work taking into account avoidance of activities that cause or worsen the pain such as heavy lifting or pushing/pulling, walking long distances. It did not recommend altered hours but amended duties and workplace adaptations. The Claimant's evidence was that the Respondent did not amend his duties or refer him to occupational health. On 27 September 2021, the Claimant attended an appointment with his GP, who issued another sick note which advised that the Claimant may be fit to work if the Claimant was granted shorter working days and amended duties to include avoidance of physical work and agreed in conjunction with occupational health [236]. However, the Respondent did not put the Claimant on restricted duties, or he say to refer him to Occupational Health.
19. Earlier in 2021 the Claimant had a meeting with Ian Blakeman (Governing Governor) and his line manager, Jamie Urban, during which the Claimant outlined his concerns about the lack of support he had received from management staff in relation to them not following medical advice and allocating the Claimant work that the Claimant was restricted from doing. On 1 October 2021, the Claimant had a brief conversation with the Governing Governor at the time, Ian Blakeman who asked the Claimant to provide details of his concerns. On the same date, the Claimant sent an email to Ian Blakeman and copied in Gary Ord (Prison Officer Association (POA) Representative) and Patricia Hall (Care Team Member). In the email, the Claimant raised his concerns but also set out his ongoing health conditions. [62]. Ian Blakeman replied to the Claimant's email on 4 October 2021 and stated that he would make enquiries and get back to the Claimant. However, Ian Blakeman gave evidence that he might have asked another manager to deal with the Claimant's concerns and the Claimant got referred to Occupational Health, but he was not categorically saying that he did anything with the Claimant's email. We find that Ian Blakeman had some knowledge of the history of the Claimant's health and his restrictions and had met with the Claimant about these restrictions in 2021. So had some idea of the impact of the Claimant's health conditions on his ability to carry out his OSG role and potentially other roles.
20. The Claimant was sick due to low back pain on 27 September 2021. The sick note signed him off until 14 November 2021 [236]. The Claimant's line manager, Custodial Manager Neil Craig, referred the Claimant in November 2021 to Occupational Health. In December 2021, the Claimant attended occupational health. The report following the assessment recommended that the Claimant return to work on a phased return, initially working reduced hours of 2 x 4-hour shifts per week, gradually increasing over a period of 4-6 weeks; with adjusted duties limited to administrative duties and no manual handling/heavy lifting or night shifts for 6 months [110].
21. The Claimant was issued with a sick note dated 30 December 2021 [239] for low back pain. The sick note signed the Claimant off work until 31 January 2022, but also recommended a phased return to work over the first month with support from occupational health to advise on further steps. The Claimant came back to work in January 2022 and was on restricted duties and remained at work until June 2022.

22. The Claimant was referred to Occupational Health and attended Occupational Health on 23 June 2022. By June 2022, the Claimant was receiving weekly CBT counselling [78]. The 23 June 2022, the occupational health report requested that the Respondent review the Claimant's current working hours upon his return and asked that the Claimant be excluded from night duties where operationally viable [75].
23. On 27 June 2022 the Respondent agreed that the Claimant could work reduced hours from 37 hours to 32 and reduced the Claimant's shifts from 4 days to 3 days [88]. We find that the evidence in respect of whether the Claimant was at work is unclear and unreliable. The Occupational Health report states that the Claimant is psychologically unfit for work [75], although the Claimant said in cross-examination that he was at work at the time. Then on 4 July 2022, the Claimant attended Occupational Health again and the Occupational Health advisor stated in the report, *"Mr Karim remains in work and reports he is coping well in his current role, and management have been supportive with adjustments of reduced shifts and lighter duties."* [78] At the time, on 27 June 2022 the Claimant told the Respondent that "he is happy to be at work with adjustments" [88]. There were no fit notes that covered the period that which Occupational Health suggested that the Claimant was off work. We find that the Claimant told Occupational Health that he psychologically could not do 4 shifts a week, which he was doing by 13 June 2021, and working night shifts were due to restart by the end of July [91]. This is why the Occupational Health reported that the Claimant was psychologically unfit for work and why after meeting with his line manager at the time CM Augee who agreed that he would not have to work 4 shifts per week but reduced it to 3 shifts, the Claimant was able to say when attending Occupational Health just 11 days later on 4 July that he was coping with his current role. We find that the Claimant exaggerated his psychological state to Occupational Health so that they would deem him unfit to carry out his 4 shifts. This indicated that the Claimant couldn't do his full hours, night time working and full duties of the job in June 2022 even with the support of his manager at the time, CM Augee whom the Claimant said in his evidence was the only one who he felt was supportive of his health issues.
24. On 2 August 2022, whilst in work the Claimant attended Occupational Health again; by this time, the Claimant had a new manager CM Annika Hunte. The Occupational Health advisor reported that *"However, his combination of health problems have impacted on his psychological health and he feels that he has been struggling at work"* [81] The advisor also stated, *"He is not fit for full OSG duties in view of his shoulder problems and I would recommend that he avoids heavy manual handling tasks, task that involve raising the arms above shoulder level and tasks that involve pushing or pulling. A risk assessment approach is recommended to identify suitable duties for him. If adjusted duties cannot be supported, then I would recommend that a temporary regrade to an administrative role is considered."* [82]
25. Following a meeting with the Claimant on 29 August 2022 [94], the Respondent agreed that the Claimant would remain on restricted duties of 3 days a week, doing 2 main shifts and 1 admin shift in August 2022 [84].

26. On 7 September 2022, the Claimant saw a private Occupational Health provider IPRSHHealth [104-106], organised by the Respondent. The Claimant completed a self assessment and scored himself out of 100. He scored work related lifting items as a 10 and non work related activity using his right arm at 40.[105] Over a period of 30 weeks the Claimant saw this Occupational Health 3 times.
27. The Claimant met with Mr Darko on 13 April 2023 [110]. In that meeting, the Claimant agreed to undertake his full contractual hours but asked to continue with his restricted duties plan (this excludes him from working in the following areas: Roman Way Gate, North Wall Gate, Canteen, and Property). We find that the Claimant was not unable to do his full contractual hours.
28. By letter dated 24 April 2023 [130-131] the Claimant's line manager at the time Mr Jerry Darko, wrote to the Claimant with the outcome of a formal attendance meeting ('FARM'). The Claimant was subjected to the FARM because the Claimant had taken a total of 15 days in the last 12 months, during which there was ongoing support in place for the Claimant since 2022, with no manual handling required of him [130]. The Claimant was issued with a warning to remain in place for 15 months. The Claimant was subject to an improvement period of 3 months, where the Claimant should not exceed 25% of the standard trigger in the attendance and management policy and procedure, which translated into no more than 2 days' absence or 4 spells of sickness absence.
29. The Claimant went off work on 26 April 2023. We did not have the GP's sick note as to the reason for the Claimant's sickness absence. However, the Occupational Health report dated 1 June 2023 [137-139] reported that the Claimant was off work due work related stress [137].
30. Mr Darko requested a pension estimate from the Ministry of Justice, who responded on 26 April 2023 with a pension estimate for the Claimant of £43,347.50 [132-133]
31. By letter dated 16 June 2023, the Claimant was invited to attend a FARM on 23 June 2023 to discuss his continued absence since 26 April 2023 and the Occupational Health report dated 1 June 2023 [140-142]. The occupational health advisor had stated in her 1 June report [136-139] that as previously recommended in the historical Occupational Health reports, she recommended *"3 month period of adjusted duties regarding starting times, no heavy lifting and shorter shifts to be discussed and agreed at a local level with management and for the information regarding adjustments to be disseminated through prison management so all departments and managers are aware of his adjustments."* [138]. It was also suggested in the report that *"I would recommend that at the end of the 3 month period, if Mr. Abdul's physical and mental health issues have not resolved then Further Medical Evidence could be obtained and consideration to either redeployment to a less physical role and/or a Capability assessment in order to avoid ongoing stress and uncertainty for both parties."* [138]
32. The Claimant was referred to Occupational Health again. The Occupational Health advisor reported on 22 June 2023 [143-145] that the Claimant

reported that he was off work due to his mental health [143] and his anxiety increased to his perceived work related stressors [144]. The occupational health report also set out the recommendations of reasonable adjustments of “...8 hour maximum shift length, avoid heavy lifting (max 10kg), avoiding repetitive tasks such as vehicle and body searches. He may benefit from a DSE assessment if completing desk based duties and regular rest breaks e.g. 5-10 minutes every 60 mins. It is advised that his limitations are taken into account when considering appropriate duties (mobility limited to 15 minutes walking)” [144]

33. Following the Occupational Health report dated 22 June 2023; the Respondent had a meeting with the Claimant on 23 June 2023 to discuss the occupational health report and the Claimant's sickness absence. In a letter of the same date confirming the contents of the meeting, Mr Jerry Darko states “ *What triggered your current absence which is work – related – stress. You stated that you did not feel supported by the service in that our central detail continue to detail you for Nights and ED contrary to what was agreed with you in your workplace passport and restricted duties workbook.*” We find that the Claimant was off work because of his increased stress and anxiety, which was referred to as mental health and work related stress.
34. The result of the meeting on 23 June 2023 was contained in Mr Darko's letter to the Claimant dated 23 June 2023 [146-]. There was a reference to a discussion of the estimated compensation under efficiency terms. Mr Darko also wrote, “ *You informed me that you may return to work at the end of your current doctor's note which is 30/06/2023. As you are unlikely to be able to return to your full duties as an OSG within a reasonable length of time, we will not be able to continue to support your continued absence. I will refer your case to a decision manager to consider whether dismissal/demotion is appropriate to discuss this further.*” [147]
35. We find that it was reasonable for the Respondent to have considered termination on efficiency terms at this stage, the Occupational Health report dated 14 March 2023 stated, “*In my opinion, Mr Abdul is not fit for full and effective services due to chronic medical conditions. He may be fit to work in a different/adjusted role with some recommendations to be considered by his employer.*” [102] The Claimant was unable to do his full OSG duties, and so termination on the grounds of efficiency was one option that would need to be considered.

Dismissal process

36. By letter dated 31 July 2023 [148-150], Ian Blakeman wrote to the Claimant and invited him to attend a meeting to discuss his absence on 9 August 2023. Ian Blakeman stated in that letter, “*I will also explore with you whether you would accept a regrade/downgrade as an alternative to dismissal if this option was offered to you.*” [148]
37. In the meeting on 9 August 2023, Governor Odejemi (who presented the employers' case for dismissal) explained that the Claimant told him that he was working 32 hours and getting full pay. The Claimant was asked about the alternative roles. Ian Blakeman stated “*We have band 2 jobs, but they*

involve handling and lifting. Its filing, moving things from OMU to other places in prison. Would you be able to handle that? The Claimant answered, *"I could slowly."* [152].

38. Ian Blakeman explained in oral evidence that the Claimant did not try to persuade him that he could do the band 2 role. The band 2 jobs all involved manual handling and lifting, he knew the roles well, and he said more about the job in the meeting, for example, where it was based, the repetitive nature of the role, but those points are not recorded as the notes of the meeting, as the notes are not verbatim. He said it is a really physical job, probably more than the OSG job and really repetitive and could not always be done slowly. He did not believe that the Claimant could have done the band 2 admin role. Mr Blakeman added that if the Claimant had come back to him and said that he wanted a regrade he would have considered it. He accepted that 500 pages of paper weighed 2.5 kg, but said the files are in document boxes. The records were located in a room which involved lone working. Mr Blakeman confirmed that that the band 2 role was Monday-Friday 9-5. Ian Blakeman said that the Claimant's post had to be covered and it was not a short time issue and that the Claimant could not cover the post. He said that there was a financial impact, and he had no authority to overspend and it would not have been reasonable to do so. There was no one else to do the duties and there was also a morale element in ordering people to do someone else's duties. We accept Ian Blakeman's evidence on this. We find that Ian Blakeman's evidence that he would have considered a regrade if the Claimant came back to him was not the same as Ian Blakeman saying he would have given the Claimant the regrade. Ian Blakeman was just acknowledging that there could have been things that he had not thought of that the Claimant presented worth considering.
39. The Claimant's evidence was that he could lift 10kg, but he accepted that in the appeal, he said 5kg. He said that he did not know whether he could lift files about shoulder height; it would depend on the weight of the records. He accepted that in the 9 August meeting, he didn't ask about how heavy the objects were and didn't offer any information about what he was able to lift or do at that stage. In evidence, he further added that he should have been given the opportunity to try the Band 2 roles for a few months. The Claimant's evidence was that he could have done the OSG role with adjusted duties. When the Claimant was challenged in evidence that he could not do the OSG full duties, the Claimant said that he could do his role with reasonable adjustments and support from his managers. The Claimant said that he had worked with dead records before. However, we find that the Claimant did not do the full duties of the band 2 role when he did it, and in that role, there would have been live and dead records, and he accepted in evidence that he would need someone to help him with the records and coupled with working slowly; this would not have been acceptable in the long term.
40. It is worth noting in the Claimant's disability impact statement that the Claimant says in relation to his ability to lift, carry or move everyday objects, *"My ability to be able to lift and carry items has been severely affected. On a good day, I can carry a light shopping bag with a few light items in it. Even moving the kettle with my right arm causes me pain, which can sometimes be severe"* [242] and in relation to his manual dexterity, the Claimant stated

“Due to the pain, and altered sensation caused by the spinal stenosis. I find it difficult to be able to hold onto items, such as a knife to cut food, the steering wheel of my car, and a pen to write. As a result, my writing has become worse, I drive less, and eat foods which require me to cut them up less.” [242]

41. We find that even if the Claimant had been given a trial for the admin role, based upon his own evidence of his ability, the Claimant clearly would not have been able to carry files and put them away, which was the predominant purpose of the role. We find that the Claimant would not have needed help doing the role, he would have needed someone to do the role for him, which we consider would not have been reasonable for the Respondent to have accepted.
42. At the end of the 9 August meeting Ian Blakeman told the Claimant that he had 2 options of a regrading or dismissal, or he could take the compensation under the grounds of efficiency and told that he would get 13 weeks' pay in lieu as well. The Claimant was given some time to consider these options with his union representative. After the break, the Claimant returned and told Ian Blakeman that he would like to take the option of termination on the grounds of medical inefficiency. The Claimant was told by Ian Blakeman in the meeting that he would have to give the compensation amount back if he got reinstated, and reemployment into the Service would be difficult unless he could demonstrate good health. Ian Blakeman also added, *“I can authorise 75% of compensation that's why I considered restricted duties, and you are physically unable to do that so I can support 100% and I will make this clear when I write to you. Half pay definitely would have kicked in at least but should have received a letter from SSCL. Estimate for compensation was £43,347 sometimes they do knock it down to 75%. You will get 13 weeks lump sum or remain on sick which I wouldn't recommend. Get leave and toil”*. [153] The Claimant was told in the meeting by Ian Blakeman that the earliest he should expect to receive all the payments would be September 2023 [153]. The Claimant was asked if he understood everything, and the Claimant said yes. [153]
43. By letter dated 11 August 2023 [154-156], Ian Blakeman confirmed the Claimant's dismissal. Ian Blakeman's reason for dismissal was set out in his letter as *“I believe that your mental health issues could be resolved, and we could facilitate a return to work. So, we began discussing your physical symptoms which had been the reason why you had been on restricted duties for two years prior to this absence. I asked you what the main issue that impacts you at work is and you told me it was the bulging disc in your neck, which means manual handling is not possible for you. However, you stated that you would like to return to work but only Monday to Fridays. I highlighted that I expect OSGs do the full range of their duties, which includes working weekends and nights. Furthermore, with your current physical health issues, you could not operate the North Wall or Roman Way gates. Therefore, it is clear to me that you would not be able to return as an OSG. I then considered whether you would be able to regrade to another role within the prison. The only role I could offer you was a Band 2 position in OMU, which requires lifting and transporting of records which you would not be able to do with your condition.”* [154-155]

44. *"Taking account of all information available to me I have concluded that your employment with HMPPS will be terminated because of your inability to return to full duties within a reasonable timescale."* [155]
45. The Claimant was told in the letter that his last day of service would be 9 August 2023, and that he was entitled to 13 weeks' notice, and that he would be paid up to and including his last day of service, which was 8 November 2023 and for any holidays owed but not taken. However, the Claimant was told that he was not required to work his notice period, and after discussing this with him, Ian Blakeman stated that he and the Claimant had agreed that he would receive a payment instead of serving a notice period [156]. The Claimant was told that he had a right to appeal and that he must appeal within 10 working days of the date he received the letter of dismissal.
46. We find that although Ian Blakeman agreed to pay the Claimant a payment in lieu of notice, we accept the Claimant's evidence that he did not receive this payment. We considered all the Claimant's payslips after his dismissal date, which included payslips for August [282], September [283], October [284], November [170] and December 2023 [171]. The Claimant's August payslip has a net payment of £611.23. The September 2023 payslip has a net payment of £3675.59 [284]. The Claimant's October pay slip recorded £0, the November pay slip stated a net payment of £294.53 for payment in lieu of annual leave and the December pay slip had 2 compensation payments, one taxable of £14,031.34 and the other non-taxable £30,000, totalling £38,867.14. Whilst the Claimant was paid for basic pay, occupational sick pay arrears and SSP arrears as well as other payments totalling £3,675.59 net (which the Respondent regarded as an overpayment) in his September payslip, none of the payslips from August-December 2023 reflected a sum equal to 13 weeks' pay net or gross. We find that the £38k paid in December did not include the Claimant's PILN either.

Appeal

47. The Claimant appealed his dismissal [157-160] to Ian Bickers, Group Director for London. The Claimant's grounds of appeal were essentially that Ian Blakeman did not consider properly whether the Claimant could do the alternative admin role. The Claimant said that he could lift up to weights of 10 kg and for things heavier, he hoped he could rely on assistance from colleagues. That he had received poor management from his most recent managers, Mr Darko and Governor Odejemi. He stated in his appeal that he had told Governor Blakeman, as regards the regrade role, that he could try the role and, given time, he should improve and would be working regular hours Monday to Friday. Other staff were on restricted duties and were not subject to the requirement to work fully. Governor Blakeman did not carry out a full assessment of his capabilities to be regraded and dismissed the option without fully exploring it and that regrading was mentioned in historical Occupational Health reports, and so should have been considered earlier. In addition, the Claimant's grounds also included the Respondent having failed to consider reasonable adjustments and having discriminated against him because of his disability.
48. The Claimant's appeal took place on 19 September 2023, where the

Claimant attended with a union representative [161-162]. At the appeal, the Claimant admitted that he worked 32 hours for a period of approximately 2 years because he could not work full-time because he had to attend medical appointments [185]. However, we find that the Claimant worked nights, so there would have been times when he could attend medical appointments during the day.

49. In the appeal, Tracy Ansell, the HR person assisting the appeal decision maker, Mr Ian Bickers, asked the Claimant about whether he would need to have reduced hours in the alternative posts. Tracy Ansell asked, *"Would you mind if I just asked a question about reduced hours to enable you to attend medical appointments? So, for instance, if there were a regrade, would you still be required to work those reduced hours?"* [188] The Claimant replied, *"No, because they will accommodate and, and plus I, I, I, I can solve, if I, I can do a late shift or an early shift and cover my hours."* Then Ian Bickers said, *"If you were regraded into an administration role?"* The Claimant replies, *"Yeah...they, they have flexible working"*. Then Ian Bickers stated, *"I was going to say, Abdul, they, yeah, because they don't work shift patterns, do they? They work in more flexible working, so you'd be able to work. The Claimant then agrees that "Yeah and it's much flexible, yeah –"* [188]
50. By letter dated 21 September 2023 [163-164], Ian Bickers rejected the Claimant's appeal [163-164]. The reason for rejection is stated in the letter as *"You confirmed for the previous 2 years you had to work a reduce shift pattern of 32 hours per week as opposed to your contractual 39 hours. You advised this was due to a need to attend medical appointments in connection with your medical conditions. You confirmed this arrangement would need to continue should you obtain a role within an administrative function, with you relying upon flexible working and other HR policies to enable you to continue to attend these appointments. I believe it is not reasonable to expect establishments to sustain adjusted duties indefinitely, and without assurance the need for them would reduce."* [163-164] We find that the reason why Ian Bickers rejected the Claimant's appeal is because he considered that the Claimant would be working reduced hours in the admin role and that the reduction in hours was not sustainable for the service, and so the role was not a viable alternative.

Notice

51. On or before 12 October 2023, the Claimant contacted HR in order to make inquiries about his pay. We did not see the context of email sent by the Claimant but in the bundle was an email header with no date, but the Claimant's email address and the Respondent's enquires address, and the subject *"need support in understanding pay"* [167]. A follow-up email from a Daren Willoughby, 12 October 2023 to the Claimant stated, *"Yeah thank you for your query regarding your pay. I have checked your record and pay slips and the amount paid in September was not for PILON but was unfortunately an overpayment of salary."* Then later on in the email, Mr Willoughby concluded, *"As you were on nil pay whilst on sick leave and did not return to work before you were dismissed your PILON will be calculated as if you had remained on sick leave. As such you would not receive payment for your notice. As you were on the nil pay."* [166] The Claimant

said that he contacted lawyers in or around October/ November 2023 because he was being pursued by the Respondent, who said that he had been overpaid. The Claimant gave evidence that he gave his letter of dismissal to his lawyers when he instructed them. The Claimant said that he was stressed and trying to deal with his physical symptoms, and that time should be extended in relation to his claims because of that, and it was difficult to work out. We find that the Claimant knew that he had not been paid his notice pay by October 2023, that is why he contacted HR and knew he would not be paid any further pay, including notice pay, after the email dated 12 October 2023 from HR.

52. The Claimant did not contact ACAS before the expiry of 3 months less a day on 8 November 2023. In the claim form, which was drafted by his solicitors, it states as the reason for the claim being submitted out time “*the primary reason for this was due to typographical error made regarding the Claimants dismissal date that was submitted as part of his referral to his legal representatives. However on identification of the time limit issue urgent steps were taken to issue the claim promptly on the same day as the EC certificate was issued.*” [15]. The Claimant gave evidence that he had inserted that he was dismissed on ‘8/9/2023’, rather than ‘9/8/2023’. It was then subsequently realised that the date of dismissal was 9 August 2023 and urgent steps were taken to issue the claim and on the same day that the ACAS Early Conciliation Certificate was issued.
53. We do not accept the reason set out in the claim form as a reason for the lateness of the Claimant’s ET1 submission, as the solicitors were given the letter of dismissal by the Claimant, and the letter of dismissal sets out the effective date of dismissal using the words 9 August 2023, not using a number format for 9 August 2023. If the number format was followed then the solicitors would have understood the limitation period to be 3 months less a day from 8 September 2023 and for the limitation period to have ended on 7 December 2023. Yet ACAS was contacted on 10 December 2023, which does not accord with the limitation period. Furthermore, the Claimant’s claim form mentions nothing about his mental health or stress as impacting on the reason for the lateness of the submission of the claim form, nor is it mentioned in his written witness statement.
54. The Claimant contacted ACAS on 10 December 2023. The ACAS early conciliation certificate was issued on 12 December, and the Claimant presented his claim form on the same day. The Claimant gave evidence that he checked his bank account on 10 September 2023, which is when he was to be paid his last salary payment after termination. He accepted that he was told that he would be due 13 weeks’ pay. He accepted that he believed that he would receive the 13 weeks shortly after being dismissed but that he saw that he wasn’t paid but said that he was not in his right mind as he had just lost his job. He did not pursue HR at that point to inquire what had happened with this pay. He did not get actual payslips as they had to be accessed on the Respondent’s pay system, but he did not try and access them. The Claimant said that during his employment, he was paid on the last day of the month. The Claimant said in evidence that he checked his bank account to see what he had been paid and that he knew that the figures that he had been paid in August and September were not his PILN. The Claimant accepted that he had spoken to ACAS before the appeal and

during his absence sickness process of the FARMS. ACAS advised the Claimant to look at their website, which the Claimant did and saw advice as to how to bring an unfair treatment claim and things like that. After the appeal decision, the Claimant's union representative told the Claimant that the Claimant had been mistreated and told him that he should contact the union solicitors. The Claimant said that he contacted the union solicitors 2-3 weeks after he received the appeal letter, which was on or around 21 September 2023, and so he probably spoke to his solicitors around the end of October 2023.

The Law

Time

Discrimination

55. Section 123 EqA contains the provision on time limits applicable to discrimination claims, it states:

“(1) [Subject to [[section 140B]]] proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable [.....]

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”

56. When exercising their discretion to allow out-of-time claims to proceed, Tribunals may also have regard to the checklist contained in Section 33 of the Limitation Act 1980 (as adapted by the Employment Appeal Tribunal ('EAT') in British Coal Corporation v Keeble and ors [1997] IRLR 336).

57. Keeble takes the Section 33 factors listed as: considering the prejudice that each party would suffer if the claim were allowed or not, and to have regard to all the circumstances of the case — in particular, (a). the length of, and reasons for, the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued as cooperated with any requests for information; (d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

58. In Department of Constitutional Affairs v Jones [2008] IRLR 128, the Court of Appeal ('CA') emphasised that these factors are a 'valuable reminder' of what may be taken into account, but their relevance depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case.
59. Although a tribunal is not obliged to go through every factor in the Keeble list, a tribunal will make an error of law if a significant factor is left out of account: London Borough of Southwark v Afolabi [2003] ICR 800, CA.
60. A tribunal considering whether it is just and equitable to extend time is liable to err if it focuses solely on whether the Claimant ought to have submitted his or her claim in time. Tribunals must weigh up the relative prejudice that extending time would cause to the Respondent on the one hand and to the Claimant on the other.
61. In the more recent decision of Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23, the Court of Appeal warned tribunals not to take the Keeble factors as the starting point for the tribunal's approach to the just & equitable extension. The best approach for a tribunal in exercising the discretion is to assess all the factors in the particular case that it considers relevant including in particular the length of and the reasons for the delay.

Breach of contract

62. The Employment Tribunal Extension of Jurisdiction (England & Wales) Order 1994 states
63. Article 3 of The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, SI 1994/1623 provides: "*Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or a sum due, in respect of personal injury) if –*
- (a) the claim is one to which section 13(1) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force would have jurisdiction to hear and determine;*
- (b) the claim is not one to which article 5 applies;*
- (c) the claim arises or is outstanding on the termination of the employee's employment."*
64. Article 7 states:
- "subject to article 8B an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented a within the period of three months beginning with the effective date of termination of the contract giving rise to the claim or*
- (b) where there is no effective date of termination within the period of three months beginning with the last day upon which the employee worked in the employment which is terminated or where the period within which the*

complaint must be presented in accordance with paragraph (a) or B is extended by regulation 15 of the employment act 2002 dispute resolution regulations 20 2004 the period within which the complaint must be presented shall be the extended. Rather than the period in paragraph a or B see where the tribunal satisfied it was not reasonably practicable for the complaint to be presented within whichever of these. Is applicable in such further period as the tribunal considers reasonable."

65. The contractual jurisdiction of employment tribunals is governed by: Section 3 of the Employment Tribunals Act 1996 (ETA 1996) and The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623) (Extension of Jurisdiction Order 1994). 3. For an Employment tribunal to hear a contractual claim brought by an employee, the claim must, amongst other criteria, arise or be outstanding on the termination of the employment of the employee.
66. So far as relevant, these provisions require that the claim for breach of contract should arise or be outstanding on the termination of the employment of the employee. The claim must be for one of the following: - damages for breach of a contract of employment or any other contract connected with employment; or - the recovery of a sum due under such a contract (Section 3(2), ETA 1996 and Article 3, Extension of Jurisdiction Order 1994.) 7. A claim is outstanding in this sense if it is in existence on the termination of the employee's employment, regardless of whether the employee has taken steps before the termination to resolve the claim (Mitie Lindsay Ltd v Lynch UKEAT/0224/03).

Unfavourable treatment because of something arising in consequence of disability.

67. Section 15 EqA states:

*"(1) A person (A) discriminates against a disabled person (B) if –
A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

(2) Subsection (1) does not apply if A shows that A did not know and could not have reasonably been expected to know, that B had the disability."

68. The correct approach when determining section 15 EqA claims is set out in the EAT decision of Pnaiser v NHS England and others UKEAT/0137/15/LA at paragraph 31.

69. The approach is summarised as follows:

The Tribunal must identify whether there was unfavourable treatment and by whom – no question of comparison arises;

- a. The Tribunal must determine the cause of the treatment, which involves examination of conscious or unconscious thought processes. There may be more than one reason, but the "something" must have a significant or more than trivial influence

so as to amount to an effective reason for the unfavourable treatment;

- b. Motive is irrelevant when considering the reason for treatment;
- c. The Tribunal must determine whether the reason is “something arising in consequence of disability”; the causal link between the something that causes unfavourable treatment and disability may include more than one link – a question of fact to be assessed robustly;
- d. The more links in the chain between disability and the reason for treatment, the harder it is likely to be able to establish the requisite connection as a matter of fact;
- e. This stage of the causation test involves objective questions and does not depend on the thought processes of the alleged discriminator;
- f. Knowledge is required of the disability only; section 15 (2) EqA 2010 does not extend to the requirement of knowledge that the “something” leading to unfavourable treatment is a consequence of disability;

Justification defence under section 15 EQA 2010

- 70. When considering the defence of justification, the role of the Tribunal is to reach its own judgment, based on a critical evaluation, balancing the discriminatory effect of the act with the business needs of the Respondent.
- 71. The burden is upon the employer to show that the treatment is a proportionate means of achieving a legitimate aim.
- 72. In the case of indirect discrimination, it is the provision, criterion, or practice (PCP)] which needs to be justified, whereas in the case of discrimination arising out of disability, it is the treatment.
- 73. Although it is worth noting that, unlike section 19, where knowledge of the disability is not a necessary component, knowledge of the disability is a requirement to justify a section 15 discrimination arising from disability claim.

Analysis & Conclusions

- 74. We considered the oral submissions of the parties and took them into account in our decision.

Disability discrimination

Just & equitable jurisdiction

- 75. The Claimant’s complaint in respect of his dismissal complaint is out of time under issue 3.2.1. The Claimant was dismissed on 9 August 2023. 3 months less a day from the Claimant’s dismissal is 8 November 2023. However, the

Claimant did not contact ACAS until 10 December 2023. The Claimant was issued the ACAS early conciliation certificate on 12 December 2023 and presented his claim form on the same day. The Claimant's complaint of discrimination arising from disability in relation to his dismissal is therefore out of time by approximately 1 month. However, the Claimant also had a complaint that his appeal decision was an act of discrimination under issue 3.2.2, and the appeal decision is dated 21 September 2023. This is within 3 months less a day of the limitation period, and so is in time.

76. The Claimant stated in his claim form that the primary reason why he did not present his dismissal claim in time was because of a typographical error in respect of the date of dismissal. The Claimant's witness statement also stated this, pointing to the typographical error of transposing the day and month from 9/8 to 8/9. However, in evidence the Claimant also said that he was not able to present his claim because he was still dealing with his physical and mental stress. This reason is not set out on the Claimant's claim form or witness statement. Furthermore, the Claimant accepted that he had contacted ACAS before his appeal and when he received the warning following a FARM meeting on 24 April 2023. The Claimant accepted that ACAS had referred him to their website, and the Claimant went to the website and saw how to bring a claim about unfair treatment and things like that.
77. The Claimant also instructed solicitors by the end of October 2023, after he received the result of his appeal. In considering the factors as set out in Keeble we must consider the reason for the delay and the length of the delay. The reason for the delay was because of the Claimant's and his solicitors' mistake. This is not a good reason. We found that we did not consider that it was a mistake in any event that led to the lateness firstly because the Claimant's evidence was sent his dismissal letter which had the date of dismissal on it to his solicitors at the end of October 2023 and the date in the letter was written in full as 9th August and the claim form was not submitted on 7 December 2023 as would be expected if the error was because of the transposing of dates. In any event, it would have been the solicitors who made the mistake regarding the dates of presenting the claim form in time and that had nothing to do with the Claimant's mental stress, and his mistake was irrelevant.
78. The delay of a month is a significant delay considering that the Claimant was legally advised from well within the time limit and knew of his right to bring a discrimination complaint within the primary time limit and had sought advice from ACAS months earlier and accessed the ACAS website telling him how to bring a claim in respect of unfair treatment and so would have seen the time limits. It is therefore not just and equitable to extend time.
79. However, the appeal decision is in time and therefore, if the appeal decision is discriminatory and we conclude that the dismissal decision is also discriminatory, then there would be a continuing act in respect of the discrimination because the appeal process decision is part of the Claimant's dismissal. This was argued by Ms Loraine in submissions. It clearly falls within a continuing state of affairs in relation to the decision of Hendricks. Therefore, if the dismissal and appeal are discriminatory acts, then the dismissal would be in time.

Discrimination arising from disability

80. The Respondent have accepted that the Claimant's disabilities of spinal pain and stress, and anxiety. The Claimant accepted that he was not relying on urology, and testicular problems were not claimed as disabilities.

Issue 3.1.1 Absence from work from April 2023 to date of dismissal. The Claimant was absent from work from 24 April 2023

81. The Claimant went off work on 26 April 2023. We found that the Claimant was off work from 26 April due to increased anxiety and work related stressors. The increased anxiety related to the Claimant's mental health disability of stress and anxiety. So we conclude that the Claimant's absence from work from April 2023 was something arising from his disability.

Issue 3.1.2 Earlier absence from work.

82. There were various reasons why the Claimant was off work from 2021 onwards. The Claimant had a sick note dated 22 July 2021 [235], 27 September 2021 [236], and 30 December 2021 [239], all for low back pain. These absences from work before April 2023 amount to earlier absences. We conclude that some of the Claimant's earlier absences were something arising from his disability.

Issue 3.1.3 Inability to work 37 hours per week and/or the need to work no more than 32 hours per week

83. The Claimant worked 32 hours for a period of approximately 2 years because at the appeal hearing, the Claimant explained that he could not work full time because he had to attend medical appointments [163-164]. However, the Claimant worked nights, so there would be times when he could attend medical appointments during the day. The Claimant said to his line manager, recorded on 13 April 2023 in the restricted duties work book, stated that he could return to work full time (i.e. 37 hours) but could not undertake full duties. It is for those reasons that we conclude that the Claimant was not unable to work 37 hours per week, and this did not arise from his disability.

Issue 3.1.4 Manual handling restrictions, in particular inability to not lift items greater than 10kg.

84. In the report dated 22 June 2023, the occupational health report that a recommendation is that the Claimant should avoid heavy lifting (max 10kg). In those circumstances, we conclude that the Claimant did have manual handling restrictions and was unable to lift items of not greater than 10 kg. So the Claimant's manual handling restrictions and inability to lift items no greater than 10kg were something arising from his disability.

3.2 the Claimant relies on each of the following things as being treated "unfavourably" because of one or more of the "something" mentioned in previous paragraph.

3.1.1 Dismissal on or around 9 August 2023

85. We conclude the dismissal was unfavourable. Ian Blakeman's reason for dismissal was that the Claimant could not carry out his duties as an OSG within a reasonable timescale, and there was no suitable alternative work for the Claimant to carry out. We conclude that an effective reason for the dismissal was because the Claimant could not lift more than 10kg and therefore could not undertake the alternative admin role. Had the Claimant been able to undertake this role, he would not have been dismissed.
86. We do consider that the Respondent had a legitimate aim of being able to ensure regular and effective service from its employees in line with their contractual duties and being able to adequately manage its resources. The Respondent submitted that it was entitled to take steps to ensure that its employees are either able to work their contractual shifts or be in a position whereby they will be able to return to working their contractual shifts within a reasonable timescale. We accepted Ian Blakeman's evidence that there were staffing issues in terms of finding people to do someone else's duties, with a financial and morale impact. We found that even if the Claimant had been given a trial, the Claimant would not have been able to carry out the band 2 alternative role and what he called help would have resulted in someone else actually doing the role. The Respondent was entitled to consider the medical history of the Claimant, where reasonable adjustments were made for a long period of time, and this still resulted in the Claimant being off sick and further absences and the financial and staffing impacts of keeping the Claimant on. Ian Blakeman was entitled to rely on his knowledge of the role and the Claimant as he knew the role well and knew of the Claimant's limitations since 2021 regarding all manual handling task. Considering all these things, dismissal was a proportionate response in pursuing the legitimate aim.

3.1.2 Rejection of appeal against dismissal on or around 21 September 2023

87. We conclude that the rejection of the Claimant's appeal was unfavourable treatment as it resulted in the Claimant's dismissal being upheld.
88. The Claimant's appeal was not rejected due to the Claimant's absence pre or post-April 2023. We found that the Claimant's appeal was rejected because Ian Bickers decided that the Claimant could not work full time in an admin role because he needed to attend appointments. We conclude that this was not related to manual handling of no more than 10 kg either, and so the manual handling did not have a significant influence on Ian Bicker's decision to reject the appeal, and it was not the effective reason for the unfavourable treatment. Neither was the Claimant's absence recent or historical. We found that the Claimant did not need to attend medical appointments during the time he was working and so could have attended on non-working periods, and so any absence due to medical appointments was not an absence arising from his disability. In those circumstances, we conclude that the rejection of the Claimant's appeal was not an act of discrimination as a consequence of something arising from his disability. As there is no discrimination in respect of the Claimant's dismissal appeal, there is no continuing act, and the Claimant's dismissal cannot be part of a

continuing act. The Claimant's dismissal stands alone and so is not in time and not discriminatory for the reasons we have already mentioned it is not just and equitable to extend time. The Claimant's complaint is not well-founded and is dismissed.

Notice pay

89. There was no dispute, and it was an agreed fact that the Claimant's notice pay entitlement was 13 weeks' pay. In the end, the Respondent produced no evidence that the Claimant was paid in lieu of notice, and we found that the Claimant did not receive payment in lieu of notice.

Reasonably Practicable jurisdiction

90. Section 3(c) of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623) (Extension of Jurisdiction Order 1994) ("EJO") makes it clear that the Employment Tribunal jurisdiction arises from the termination of the Claimant's dismissal. Section 3 states "*Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum other than a claim for damages or for a sum due in respect to personal injury if (c) the claim arises or is outstanding on the termination of the employee's employment.*"
91. The EJO clearly states that the time limit runs from the date of termination of the employee's contract of employment. It was agreed by the Respondent that the effective date of termination was 9 August 2023. It is clear that the Claimant's right to be paid 13 weeks' pay arose on 9 August 2023, as we found it was agreed on 9 August by Ian Blakeman that this is what would happen. In those circumstances, the claim arose on 9 August, which is on termination within the meaning of section 3(c) EJO.
92. We found that the Claimant was not paid the 13 weeks' pay, and so there was an outstanding amount of 13 weeks to be paid to the Claimant in respect of the Claimant's breach of contract complaint. Whilst we have found that the Respondent intended to pay the Claimant at the earliest in September 2023 pay, the Claimant accepted in evidence that he knew that overpayments had been made to him in his August and September 2023 pay were not his pay in lieu of notice. The Claimant did make enquiries regarding what had happened to his notice pay, and on 12 October 2023, HR provided an explanation that the Claimant was not entitled to be paid PILON. We found that the Claimant knew he had not been paid his PILON in August and September 2023 and knew he would not be paid in October 2023 following that email.
93. We conclude, therefore, that time starts to run from 9 August 2023. Ms Loraine argued that we should consider the time to run from when the Claimant learnt of crucial facts that led to the Claimant having knowledge of his claim. However, even if we approached the matter from this position, which we do not accept is valid as the right to be paid notice pay arose on termination from employment not when the Respondent told the Claimant they would not pay it, the Respondent did tell the Claimant that they would not pay him notice pay on 12 October 2023 which was within the limitation

period. Thus, we conclude that the crucial fact argument would make no difference to whether it was reasonably practicable for the Claimant to bring his claim in time or not.

94. The Claimant also gave evidence that his mental health affected his ability to submit his claim in time. The Claimant's reason in his claim form and in evidence as the reason why his claim form was not submitted in time was because of a typographical mistake. The Claimant's mental health is not mentioned in the reason, and even if we consider the Claimant's own evidence about his mental health. The claim form was in the hands of his solicitors. They admit in the claim form that they made the mistake regarding the date for submission, and so we conclude that the Claimant's mental health did not impact on the reason why the claim form was presented out of time. The Claimant contacted ACAS outside the primary time limit and therefore he does not get the benefit of any extension of time in respect of ACAS early conciliation. In those circumstances, we conclude that it was reasonably practicable for the Claimant to present his claim in time. As we have concluded that it was reasonably practicable, there is no need to consider whether the Claimant presented his claim form in a reasonable period of time. However, if we had decided that it was not reasonably practicable, we would have decided that time should not be extended. If the solicitors' mistake was getting the dates wrong and therefore they considered that the dismissal date was the 8/9 (8 September) and not the 9/8 (9 August), then they should have presented the claim form on 7 December 2023 at the latest, but the Claimant didn't even contact ACAS until 10 December 2023 which was still outside the time limit. We therefore would have concluded that the claim form was not presented in a reasonable period of time because the Claimant should have contacted ACAS at the latest on 7 December 2023 in order to be in time. The Claimant's complaint of breach of contract is unfounded and is dismissed.

Approved by:

Employment Judge Young

Date 8 October 2025

REASONS SENT TO THE PARTIES ON

10 October 2025

.....
FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>