EMPLOYMENT TRIBUNALS

Claimant: Mr Matthew Canham

Respondent: Labelneeds Limited

Heard at: Cardiff **On:** 12,13,14 August 2025

Before: Employment Judge S Jenkins

Claimant: In person
Respondent: Mrs S Maslen

JUDGMENT having been sent to the parties on 27 August 2025, and reasons having been requested by the Respondent in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

Background

1. The hearing was to deal with the Claimant's complaints of; constructive unfair dismissal, detriment on the ground of having made protected disclosures, and unauthorised deductions from wages.

2. I heard evidence from the Claimant on his own behalf and from the following witnesses on behalf of the Respondent; Angela Toseland, Customer Service Co-ordinator; Sean Daly, Pre-Press Manager; Jennifer James, Director; Peter Simpson, Label Re-winder; Christopher Maslen, Joint Managing Director; and David Berry, Joint Managing Director.

3. I considered the documents in the bundle spanning 305 pages to which my attention was drawn, together with a further 9 pages adduced during the hearing. I was also provided with a supplemental bundle spanning 26 pages, although none of the documents within that bundle were referred Law in evidence. I also took into account the parties' closing submissions.

Issues

4. The issues I had to determine had been confirmed at an earlier preliminary hearing, coincidentally before me, on 22 April 2025. They had been very

slightly modified at a subsequent preliminary hearing held before Judge Hunt on 7 August 2025, and were as follows.

1. ***Unfair dismissal***

1.1 Was the Claimant dismissed?

1.1.1 Did the Respondent do the following things:

1.1.1.1 On 15 February 2024, blame the Claimant for an accident he suffered at work.

1.1.1.2 On 18 June 2024, insist that the Claimant undertake more work despite him still being impacted by his injury.

1.1.1.3 Fail to hold a meeting on 13 September 2024 that had been proposed the day before.

1.1.1.4 On 16 September 2024, by Sean Daly, accuse the Claimant of causing trouble by raising health and safety concerns.

1.1.1.5 On 20 September 2024, by its employee Sean Daly, tell the Claimant's co-workers not to be like him and to keep their distance from him, which led to "banter" from those colleagues which the Claimant made clear he did not appreciate.

1.1.1.6 Also on 20 September 2024, by its employee Sean Daly, refuse to make clear to the Claimant's colleagues that he did not appreciate their "banter".

1.1.1.7 On 23 September 2024 give the Claimant a disciplinary warning for leaving site, without any advance notice and without giving the Claimant evidence of the concern raised.

1.1.1.8 Fail to respond substantively to an appeal against the warning made by the Claimant on 26 September 2024.

1.1.1.9 Fail to hold a meeting within a reasonable time in relation to a grievance raised by the Claimant on 3 October 2024.

1.1.1.10 On 8 October 2024, by its employee Sean Daly, remove the Claimant from working on his machine.

1.1.1.11 Fail to hold a grievance meeting on 11 October 2024 as previously indicated to the Claimant.

1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.1.2.1 whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

1.1.4 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.

1.2 If the Claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract]?

1.3 Was it a potentially fair reason?

1.4 Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the Claimant?

1.5 The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

2. ***Remedy for unfair dismissal***

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

2.1.1 What financial losses has the dismissal caused the Claimant?

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

2.1.3 *If not, for what period of loss should the Claimant be compensated?*

2.1.4 *Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?*

2.1.5 *If so, should the Claimant's compensation be reduced? By how much?*

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

2.1.7 *Did the Respondent unreasonably fail to comply with it by:*

2.1.7.1 *Not giving any advance notice of meeting in which a disciplinary warning was imposed?*

2.1.7.2 *Not provide evidence of the concern giving rise to the warning?*

2.1.7.3 *Not hold an appeal hearing against he imposition of the warning?*

2.1.7.4 *Not hold a meeting to discuss the Claimant's grievance within a reasonable time?*

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

2.1.9 *If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?*

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

2.2 *What basic award is payable to the Claimant, if any?*

2.3 *Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?*

3. ***Protected disclosure***

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

3.1.1 *What did the Claimant say or write? When? To whom? The Claimant says he made disclosures on these occasions:*

3.1.1.1 On several occasions, the earliest being on or around 17 August 2022, verbally to Sean Daly, regarding the use of the red engine hoist.

3.1.2 Did he disclose information?

3.1.3 Did he believe the disclosure of information was made in the public interest?

3.1.4 Was that belief reasonable?

3.1.5 Did he believe it tended to show that:

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

3.1.6 Was that belief reasonable?

3.2 If the Claimant made a qualifying disclosure, it was a protected disclosure because it was made to the Claimant's employer.

4. ***Detriment (Employment Rights Act 1996 section 48)***

4.1 Did the Respondent do the following things:

4.1.1 On 15 February 2024, blame the Claimant for an accident he suffered at work.

4.1.2 On 16 September 2024, by Sean Daly, accuse the Claimant of causing trouble by raising health and safety concerns.

4.1.3 On 20 September 2024, by its employee Sean Daly, refuse to make clear to the Claimant's colleagues that he did not appreciate their "banter".

4.1.4 On 23 September 2024 give the Claimant a disciplinary warning for leaving site, without any advance notice and without giving the Claimant evidence of the concern raised.

4.2 By doing so, did it subject the Claimant to detriment?

4.3 If so, was it done on the ground that he made a protected disclosure?

5. ***Remedy for Protected Disclosure Detriment***

5.1 What financial losses has the detrimental treatment caused the Claimant?

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

5.3 Is it just and equitable to award the Claimant other compensation?

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

5.5 Did the Respondent unreasonably fail to comply with it?

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

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

5.8 Was the protected disclosure made in good faith?

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

6. ***Unauthorised deductions***

6.1 Did the Respondent make unauthorised deductions from the Claimant's wages and if so how much was deducted?

Law

5. The legal principles I had to take into account were as follows.

<u>Protected disclosures</u>

6. Section 43B ERA provides as follows:

"*43B.— Disclosures qualifying for protection.*

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

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

(c) *that a miscarriage of justice has occurred, is occurring or is likely to occur,*

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

(e) *that the environment has been, is being or is likely to be damaged, or*

(f) *that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*"

7. In deciding whether a disclosure is protected by law therefore, a Tribunal has to have regard to:

- Whether there has been a disclosure of information.
- The subject matter of disclosure in accordance with Section 43B ERA 1996, asserted by the Claimant in this case to be health and safety endangerment.
- Whether the Claimant had a reasonable belief that the information tended to show one of the relevant failures in Section 43B ERA 1996.
- Whether the Claimant had a reasonable belief that the disclosure was in the public interest.

8. With regard to disclosure of information, the Employment Appeal Tribunal ("EAT"), in *Cavendish Munro Professional Risks Management Limited -v- Geduld* [2010] ICR 325, drew a distinction between the making of an allegation, which would not be said to disclose information, and the giving of information in the sense of conveying facts. However, the Court of Appeal in *Kilraine -v- London Borough of Wandsworth* [2018] ICR 1850, noted that the two categories are not mutually exclusive, and that the key guidance from *Geduld* was that a statement which was devoid of specific factual content could not be said to be a disclosure of information.

9. With regard to reasonable belief, I needed to be satisfied that the information tended to show a relevant failure in the reasonable belief of the worker, i.e. in this case the Claimant. The EAT, in *Korashi -v- Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4, directed that that involved applying an objective standard to the personal circumstances of the discloser. The EAT also noted, in *Darnton -v- University of Surrey* [2003] ICR 615, that the claimant does not need to be factually correct and need only demonstrate that they have a reasonable belief.

10. With regard to public interest, I was mindful of the guidance provided by the Court of Appeal, in *Chesterton Global Limited -v- Nurmohamed* [2017] EWCA Civ 979, that noted that the following matters would be relevant:

10.1. The numbers in the group whose interests the disclosure served.
10.2. The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed.

10.3. The nature of the wrongdoing disclosed.
10.4. The identity of the alleged wrongdoer.

Detriment

11. The claim of detriment under section 47B ERA involved two elements; there must have been a detriment, and that must have been "on the ground" of the disclosure or the health and safety matter, i.e. there must be a causative connection.

12. "Detriment" is not defined within the ERA, but the House of Lords, in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, noted, in relation to similar claims under the Equality Act 2010, that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage. The court noted that an unjustified sense of grievance cannot amount to a detriment, but emphasised that whether a Claimant has been disadvantaged is to be viewed subjectively. The Court of Appeal confirmed the same test applies in relation to detriments in protected disclosure cases in the case of *Jesudason v Alder Hey Children's NHS Foundation Trust* [2020] IRLR 374.

Causation

13. In relation to the question of whether detriment is "on the ground of" the disclosure of a health and safety matter, the Court of Appeal in *Manchester NHS Trust v Fecitt* [2012] ICR 372 noted that section 47B "*will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower*" (paragraph 45).

14. Again, the House of Lords had previously examined similar provisions within the Equality Act 2010 where treatment was required to be "by reason that". In *Chief Constable of West Yorkshire v Khan* [2001] ICR 1065, Lord Nicholls noted that the test of assessing whether treatment had arisen "by reason that", involved questioning, "*why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason?*". The Court of Appeal in *Jesudason* endorsed that approach and I bore it in mind, changing "alleged discriminator" to "alleged causer of a detriment".

15. In any detriment claim, section 48(2) ERA provides that it is, "*for the employer to show the ground on which any act, or deliberate failure to act, was done*".

16. Section 48(2) however, does not mean that, once a claimant asserts that he or she has been subjected to a detriment, the respondent must disprove the claim. Rather, it means that once all the other necessary elements of a claim have been proved on the balance of probabilities by the claimant — i.e. that there was a protected disclosure or health and safety matter, there was a detriment, and the respondent subjected the claimant to that

detriment — the burden will shift to the respondent to prove that the worker was not subjected to the detriment on the ground that he or she had made the protected disclosure.

Constructive unfair dismissal

17. In a constructive unfair dismissal case such as this, the touchstone authority remains *Western Excavating (ECC) Limited -v- Sharp* [1978] ICR 221, which noted that three matters fall to be considered:

    (i) Was there a repudiatory breach of contract?
    (ii) If so, did the Claimant resign in response to that breach and not for another reason?
    (iii) If so, did the Claimant nevertheless affirm the contract, whether by delaying too long in resigning, or by words or actions which demonstrated that he chose to keep the contract alive?

18. The breach in this case was asserted to be a breach of the implied term of mutual trust and confidence. Whilst the ability to pursue a constructive dismissal claim based on that implied term had been established by the Employment Appeal Tribunal as far back as 1981 in the case of *Woods -v- WM Car Services (Peterborough) Limited* [1981] ICR 666, it was expressly approved by the House of Lords in *Malik -v- BCCI SA (in compulsory liquidation)* [1997] ICR 606, where Lord Steyn confirmed that it imposed an obligation that the employer shall not, "*without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee*".

19. It has been clear, since *Woods* in 1981, that any breach of the implied term of mutual trust and confidence will be a repudiatory breach. However, as noted in *Malik*, the conduct has to be such that it is likely to "destroy or seriously damage" the relationship of trust and confidence.

20. The prevailing law of constructive dismissal was summarised by the Court of Appeal in *Omilaju -v- Waltham Forest London Borough Council* [2005] ICR 481, where Dyson LJ explained it, at paragraph 14, as follows:

    "*1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Ltd v Sharp [1978] 1 QB 761.*

    2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example, Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H—35D (Lord Nicholls) and

45C—46E (Lord Steyn). I shall refer to this as 'the implied term of trust and confidence'.

3. *Any breach of the implied term of trust and confidence will amount to a repudiation of the contract: see, for example, per Browne Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666, 672A. The very essence of the breach of the implied term is that it is calculated or likely to* destroy or seriously damage *the relationship (emphasis added).*

4. *The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik, at p 35C, the conduct relied on as constituting the breach must "impinge on the relationship in the sense that, looked at* objectively*, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer" (emphasis added).*

5. *A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at para DI [480] in Harvey on Industrial Relations and Employment Law:*

   "[480] Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the "last straw" which causes the employee to terminate a deteriorating relationship.""

21. Dyson LJ continued at paragraph 15:

"*The last straw principle has been explained in a number of cases, perhaps most clearly in Lewis v Motorworld Garages Ltd [1986] ICR 157. Neill LJ said (p167C) that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of trust and confidence. Glidewell LJ said at p169F:*

"(3) The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term?" *(See Woods v W.M. Car Services (Peterborough) Ltd. [1981] ICR 666.) This is the "last straw" situation.*"

22. With particular reference to the "last straw", Dyson LJ went on to say, at paragraphs 19 and 20:

"*…A final straw, not itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.*

20. I see no need to characterise the final straw as "unreasonable" or "blameworthy" conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred."

23. In this case, the asserted "last straw" was the Respondent's indication that a grievance meeting would be held on 15 October 2024, and not on 11 October 2024 as the Claimant had requested.

24. In that regard, the EAT, in *WA Goold (Pearmak) Ltd v McConnell and anor* 1995 IRLR 516, upheld an employment tribunal's decision that an employer is under an implied duty to '*reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they may have*'.

25. Then, in *Blackburn v Aldi Stores Ltd* (UKEAT/0185/12), the EAT noted, at paragraph 25:

"*In our judgment failure to adhere to a grievance procedure is capable of amounting to or contributing to such a breach. Whether in any particular case it does so is a matter for the Tribunal to assess. Breaches of grievance procedures come in all shapes and sizes. On the one hand, it is not uncommon for grievance procedures to lay down quite short timetables. The fact that such a timetable is not met will not necessarily contribute to, still less amount to, a breach of the term of trust and confidence. On the other hand, there may be a wholesale failure to respond to a grievance. It is not difficult to see that such a breach may amount to or contribute to a breach of* *the implied term of trust and confidence. Where such an allegation is made, the Tribunal's task is to assess what occurred against the Malik test*."

26. The approach to be taken in last straw cases was considered further by the Court of Appeal in *Kaur -v- Leeds Teaching Hospitals NHS Trust* [2019] ICR 1, where Underhill LJ stated, at paragraphs 45 to 46:

"*If the tribunal considers the employer's conduct as a whole to have been repudiatory and the final act to have been part of that conduct (applying the Omilaju test), it should not normally matter whether it had crossed the Malik threshold at some earlier stage: even if it had, and the employee affirmed the contract by not resigning at that point, the effect of the final act is to revive his or her right to do so.*

"Fourthly, the "last straw" image may in some cases not be wholly apt. At the risk of labouring the obvious, the point made by the proverb is that the additional weight that renders the load too heavy may be quite small in itself. Although that point is valuable in the legal context, and is the particular point discussed in Omilaju, it will not arise in every cumulative breach case. There will in such a case always, by definition, be a final act which causes the employee to resign, but it will not necessarily be trivial: it may be a whole extra bale of straw. Indeed in some cases it may be heavy enough to break the camel's back by itself (i.e. to constitute a repudiation in its own right), in which case the fact that there were previous breaches may be irrelevant, even though the claimant seeks to rely on them just in case (or for their prejudicial effect)."

27. Underhill LJ then set out, at paragraph 55, a number of questions that the Tribunal should ask itself in a constructive dismissal claim:

"*I am concerned that the foregoing paragraphs may make the law in this area seem complicated and full of traps for the unwary. I do not believe that that is so. In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:*

(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

(2) Has he or she affirmed the contract since that act?

(3) If not, was that act (or omission) by itself a repudiatory breach of contract?

(4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration

of a possible previous affirmation, for the reason given at the end of para. 45 above.)

(5) Did the employee resign in response (or partly in response) to that breach?

None of those questions is conceptually problematic though of course answering them in the circumstances of a particular case may not be easy."

Unauthorised deductions from wages

28. Section 13(1) ERA 1996 provides that an employer shall not make a deduction from wages of a worker unless required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction.

29. Although the section is phrased by reference to "deductions" complaints more usually arise in the context of under-payment or non-payment of wages, which was the basis of the Claimant's complaint in this case. In that regard, section 27(1) defines "wages" as any sums payable to the worker in connection with his employment, including any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise.

Findings

30. The findings of fact, which I reached on the balance of probability where there was any dispute, relevant to the issues I had to determine, were as follows.

Background

31. The Respondent is a small company, employing some 19 people, 12 on the shop floor and 7 in office roles. It manufactures product labels, primarily in relation to retail products.

32. The Claimant started employment with the Respondent in February 2014, and his work involved the preparation of products for customers, principally the production of blank labels. That involved using machinery and the handling of often heavy raw materials. Cranes, or hoists, were used for the purpose of lifting heavy materials to be worked on machines.

33. One of those hoists was referred to as the "red engine hoist". It had been in operation for many years but had been modified such that its support legs were shorter.

34. The Claimant asserted that a protected disclosure was that he had, on several occasions, the earliest being on or around 17 August 2022, verbally to Mr Daly, made disclosures regarding the use of the red engine hoist.

35. Very little evidence was provided about what precisely the Claimant said about the red engine hoist, whether to Mr Daly in August 2022 or on other occasions. In his witness statement, the Claimant said only that he raised concerns about the safety of the hoist, and then refused to use it. He confirmed that colleagues continued to use it. In his oral evidence, he confirmed that he had stated that the hoist was tipping forward, and that he was not comfortable using it as it was unsafe. He confirmed that he only very rarely used the hoist after 2022, with the Respondent asking other employees to use it if they were available, but that, on the rare occasions when no-one was available, he would use it. Mr Daly confirmed that he was aware that the Claimant did not want to use the particular hoist.

36. In terms of other matters prior to 2024, I made the following relevant findings.

37. The Claimant provided branded clothing to be worn in work, covered by a Workwear and Laundering Policy, to ensure that the requirements of retail customers were observed. The policy provided that workwear was only to be worn in the workplace and for travelling between home and work, and it was not to be worn in the home or garden environment, including dog walking. Specific instructions on how the clothing was to be washed were also included.

38. The Respondent provided changing facilities and lockers for employees so that they could change at work if they wished, and they were able to do that in working time, i.e. after clocking in in the morning, and before clocking out in the afternoon. Some of the Respondent's employees did that.

39. The Claimant preferred to wear work clothing to and from work. In his witness statement, he referred to an occasion in 2019 when he had met his parents in a pub after work in order to collect his daughter, and that Mr Daly had also been present, and had told him off publicly for wearing uniform.

40. Mr Daly did not cover the matter in his witness statement, and, when asked about it in cross-examination, confirmed that he had not been a manager at the time, and that the conversation had been a joke.

41. Subsequently, the Claimant operated the practice of going home directly to change, considering that doing anything else would breach the policy and leave him open to criticism. He has now claimed that he should be paid for the time spent going home to change.

42. On balance, I did not consider that the Respondent's policy regarding workwear required the Claimant to go home to change before doing anything else. All witnesses confirmed that the Respondent operated in a relaxed and flexible manner, with time off for family reasons being granted without difficulty, and with flexibility around start and finishing times being allowed. I did not consider that the Respondent would have closely policed this policy, and considered that, as long as employees' clothing was clean at work, they would have been unlikely to have passed further comment, let

alone taken formal action. I did not consider that any comment made by Mr Daly in 2019 could reasonably have led the Claimant to conclude that he had to go straight home to change at all times. Beyond that, the Claimant could, in any event, have changed at work and could have done so during his working time.

43. With regard to that, the Claimant commented that, when the policy was introduced in 2016, the Respondent had said that bags would be provided for work clothing to be taken home. They were never provided, and therefore he did not feel that he could change at work and take the clothing home. However, it did not appear to me that other employees had any difficulty in taking clothing home in their own bags, and I did not think that the Claimant could reasonably have concluded that he was prevented from taking work clothes home due to the fact that specific bags had not been provided.

<u>Events in 2024</u>

44. On 23 January 2024, the Claimant suffered a workplace accident in which his thumb was damaged. The incident is subject to separate legal proceedings, and only limited reference to the circumstances was made during this hearing. It appeared, however, that heavy raw material was provided to the Claimant in a different way to that in which it was usually provided, that the Claimant had nevertheless tried to work with it, but some of it had fallen, with the Claimant injuring his thumb by instinctively reaching out to stop it.

45. The Claimant initially carried on working for a few days after the accident, having been told by his GP that the thumb was only sprained. However, on visiting hospital, it was confirmed that ligaments were torn, and the Claimant was certified as unfit for work from 2 February 2024 onwards.

46. Initially, the Claimant was to be paid Statutory Sick Pay only, as was provided for in his contract. He was unhappy about that, and a meeting took place between the Claimant, Mr Maslen, Mr Berry and Mrs James on 15 February 2024, following which it was agreed that the Claimant would receive 100% pay in respect of his absence. That continued during the Claimant's complete absence up to a phased return on 22 April 2024, and also thereafter, during that phased return until the Claimant returned to full duties on 16 August 2024.

47. The Claimant complained that, in the meeting on 15 February 2024, he was blamed for the accident that had taken place in January. Whilst it appears that the Respondent, then and now, through its insurers, maintains that the Claimant potentially bore some responsibility for his injury, I did not consider that that amounted to blame as described by the Claimant. It was confirmed during this hearing that the material had not been delivered to the Claimant in the way that it should have been, which indicated to me that the Respondent accepted that it bore some responsibility. Beyond that, the Respondent paid the Claimant full pay for some six months, taking into

account the time spent on a phased return, and I did not consider that it would have done so had it blamed the Claimant for the accident.

48. The Claimant also contended that, during a conversation on 18 June 2024, Mr Berry had insisted that the Claimant undertake more work despite being still impacted by his injury. In his witness statement, the Claimant described speaking to Mr Berry about returning to his usual machine i.e. to his full duties or something approaching his full duties, but commented that he was taking prescribed painkillers and was unsure whether he could safely perform those duties. He noted that Mr Berry had made dismissive remarks, effectively indicating that the Claimant should just get on with his work, including the phrase that he should '*put his big boy pants on*'.

49. Mr Berry confirmed that he did make that comment, although he denied putting any pressure on the Claimant to return to his duties. He noted that the '*big boy pants*' comment simply was his way of telling the Claimant that only he could make the decision as to whether he was fit enough to undertake his full duties, and that there came a time when a decision simply had to be made.

50. On balance, I did not consider that Mr Berry's comments amounted to insistence that the Claimant undertake more work despite being still impacted by his injury. I formed that view largely from the fact that the Claimant did not, in fact, return to his full duties for a further two months, and the fact that the Respondent continued to pay him his full pay, even though he was not providing his full services during that period. I considered that, had there been an insistence, or even an expectation, that the Claimant should undertake more work, then the Respondent would have been likely to have looked to limit the amount of sick pay it was paying him.

51. In September 2024, another employee raised concerns about his situation in work. It was not clear as to the substance of that, although references were made in evidence to the employee's concerns about returning to work having been impacted by Long Covid. Mr Maslen, in his evidence, confirmed that, in his view, the matter had not been raised by the employee as a formal grievance, but it was something that was looked into. That led to other employees being spoken to about the particular employee, including the Claimant. That happened on 12 September 2024, and, whilst no specific details were put before me, it appeared that all staff were asked whether they felt safe at work.

52. Mr Maslen, in his evidence, confirmed that everyone except the Claimant had said that they were safe. With regard to the Claimant, he contended that Mr Maslen had said that a separate meeting could be held with him to address his health and safety concerns, and that that was arranged for the following day, 13 September 2024. Mr Maslen, whilst agreeing that it had been indicated to the Claimant that a separate meeting would be held with him, stated that it had not been arranged for the following day. Ultimately, no meeting took place, and the Claimant was only in work for approximately a month afterwards.

53. On balance, I did not consider that any commitment to hold a meeting on 13 September 2024 had been given. It was not specifically referred to, either verbally or by email, subsequently, and Mr Maslen confirmed that the Respondent took advice from a Health and Safety consultant in relation to its health and safety obligations, pointing out that a meeting involving that consultant could not have been arranged with only a day's notice. In my view, the indication to the Claimant was only that a meeting would be held, and not that it would be held on 13 September 2024.

54. On 16 September 2024, the Claimant had an exchange with Mr Daly about a heavy cylinder located under his work bench. The Claimant indicated in his witness statement that Mr Daly had told him to stop causing trouble and had dismissed his concern. He did not elaborate on what Mr Daly had meant by that. Mr Daly, in his witness statement, recalled that the Claimant had raised a concern about an item under his work bench which impaired his access to the crane, and stated that he then made Mr Maslen aware of that.

55. The Claimant did not challenge Mr Daly's evidence during cross-examination and, on balance, I did not consider that Mr Daly had accused the Claimant of causing trouble by raising health and safety concerns. To start with, the Claimant's own evidence in his witness statement simply stated that Mr Daly had told him to stop causing trouble, and not that he had connected that to the Claimant raising health and safety concerns. Beyond that, the Claimant did not appear to have raised the matter at any stage further, whether with Mr Daly or Mr Maslen.

56. On 20 September 2024, Mr Daly visited the shop floor and noted that the two machines, one operated by the Claimant and one operated by a colleague, were not in operation and neither employee was around. Mr Daly saw the other employee coming out of the toilet and spoke to him. The other employee, who was not called to give evidence before me, reported that conversation to the Claimant.

57. The Claimant, in his witness statement, reported the colleague as having told him that Mr Daly had told him that he should, "*stay away from [the Claimant]*", and, not "*be like [the Claimant]*". Mr Daly, whilst not agreeing that he had used those precise words, accepted that he had spoken to the colleague, noting that whilst the Claimant had been off work following his injury, the colleague's performance had improved. He recalled that he had pointed this out to the colleague, and had told him not to be led by the Claimant, feeling that he was easily influenced by the Claimant.

58. The Claimant asserted that Mr Daly's comment led to banter from the Claimant's colleagues, which the Claimant made clear he did not appreciate. The nature of that banter was only put before me to a limited extent. The colleagues involved were not called as witnesses, but the Claimant, in his witness statement, did say that the teasing, including remarks such as, '*Stop trying to cause trouble*', '*Stop trying to get Josh into trouble*', '*Sean is going after Josh now because of your moaning*' and, '*Stop crying about health and safety*'.

59. The Claimant then went to see Mr Daly, who was in the staff kitchen on his lunch break. Both agreed that the Claimant asked Mr Daly to speak to the employees about their teasing, and both confirmed that Mr Daly had said to the Claimant that he would not, as it was not his job and he would speak to Mr Maslen who would deal with such matters. He confirmed that he subsequently did that.

60. When Mr Daly noted that he would speak to Mr Maslen, the Claimant responded by saying that he was going to call ACAS. The Claimant did not call ACAS from work, whether inside the premises or outside, but instead left work at 12.20pm, when the shift was due to finish at 3.00pm, and called ACAS from his home. He did not return to work that afternoon.

61. The Claimant confirmed in his witness statement that ACAS had advised him that, as he had left the site, he might be at risk of disciplinary action, and it was agreed that the Claimant sending an email to Mr Daly to apologise in order to de-escalate matters would be useful. The Claimant sent that email on the following Monday, 23 September 2024. On the afternoon of 20 September, however, Mr Daly reported his exchange to Mr Maslen, and confirmed that the Claimant had left the site.

62. On the following Monday, 23 September 2024, a meeting took place between the Claimant and Mr Maslen, at which Mrs James and Mr Berry were also present, in which the events of the previous Friday were discussed. No advanced notice of the meeting was given to the Claimant, and both Mr Maslen and Mrs James confirmed that they had not anticipated that the meeting would lead to any disciplinary action being taken.

63. However, during the meeting, in which the Claimant did not comment upon his actions in any material way, Mr Maslen reached the conclusion, bearing in mind that the Claimant's early departure from work was clear, as confirmed by his clocking out time, and the Claimant was not disputing that he had spoken to Mr Daly in an unsettling manner, that disciplinary action should be taken.

64. Mr Maslen's view was that leaving site in the way the Claimant did potentially involved gross misconduct, but felt that only a verbal warning would be required at that stage. He did not pause the meeting to schedule a separate disciplinary hearing, but proceeded to issue the Claimant with a verbal warning, which the Claimant appeared to accept at the time, returning to work in the immediate aftermath. A letter confirming the verbal warning was issued to the Claimant by Mrs James that day, and the letter noted the Claimant's ability to appeal the decision.

65. The Claimant submitted an appeal on 26 September 2024. He focused on the ACAS guidelines on disciplinary meetings having not been followed, and that other employees had left site early and not been disciplined. He did not take issue with the allegation against him, noting that he accepted that what he did was not acceptable. The Claimant's appeal was acknowledged by

Mrs James on 7 October 2024, in which she noted that the Respondent would get back to him shortly.

66. The Claimant replied, later that day, indicating that he wanted to pass on his disappointment that he had been given five days to submit his appeal, but had not yet received a substantive response, which was past what he would presume to be an assumed reasonable timeframe of five days.

67. The Respondent's appeal procedure caters for it to deal with appeals either by way of a reconsideration or a re-hearing. Mr Maslen, Mr Berry and Mrs James discussed the appeal, largely by email as Mr Maslen was away on holiday, and it appears that they actively reviewed it, and decided that the decision should be upheld.

68. Mrs James prepared an appeal outcome letter on 4 October 2024, and thought that she had handed it to the Claimant as she had done with the initial disciplinary letter, but the metadata of the document confirmed that it had never been printed, and it was not therefore provided to the Claimant at that time.

69. In the meantime, the Claimant submitted a grievance, by email on 3 October 2024 to Mr Berry. In this, he confirmed that his main issues were; "*Lack of Health and Safety, Camera Usage, Lack of clear instruction, and No access to an up to date copy of company handbook*". He also referred to having been told that a meeting about his health and safety concerns would be held but had not taken place.

70. Mr Berry acknowledged the grievance, and sought advice from an external HR Consultant as to how it should be handled. The consultant recommended that a grievance hearing should take place, with the consultant in attendance, but noted that no-one would be available to attend until the following week, the earliest being Tuesday 15 October 2024.

71. In response to Mr Berry's acknowledgement of the grievance, the Claimant replied, saying that he had read the ACAS guidelines which said that a meeting should be held within a reasonable time period, which he understood to be up to five days. He confirmed that he was happy to meet at any time on or before 10 October 2024.

72. Mr Berry then replied, noting that he had taken advice and had been informed that the ACAS indication was only a guide, and also that it referred to five working days and not five calendar days. He confirmed that he would endeavour to have the appropriate people in place by Friday 11 October 2024, but, if not, would advise the date when a meeting would be possible.

73. The Claimant replied, noting that, whilst the ACAS guidelines were only guidelines, they were guidelines that had been imposed on him in relation to his appeal such that he thought it would only be reasonable for the company to comply with the same guidelines. He asked that, if the company could not meet with him within that timescale, they provide reasons for that.

Before any response was received, the Claimant sent a further email, on 9 October 2024, noting that he had thought further about matters and did not want to be unreasonable, so was willing to allow until 11 October for the company to get things in place for the meeting.

74. Mr Berry, not being the person who generally dealt with HR matters within the Respondent's organisation, wanted Mr Maslen to deal with the grievance rather than deal with it himself, and Mr Maslen was away on holiday until Monday 14 October 2024. Mr Maslen himself sent an email to the Claimant, whilst on holiday, on 10 October 2024, noting that a meeting on the 11th would not be possible as he was out of the country, and that, on his return on Monday 14th, he would arrange a mutually convenient date for the meeting.

75. Mr Maslen also asked, in preparation for the meeting, for the Claimant to provide specific details of his grievance regarding health and safety. He questioned whether the Claimant was referring to a specific incident and, if so, when it occurred and what had happened. He also queried if the grievance was related to any of the Respondent's processes, and, if it was, asked the Claimant to clarify the process he was referring to. He asked the Claimant to explain his grievance relating to cameras, and to clarify his grievance relating to training. With regard to the Claimant's reference to the company handbook, Mr Maslen confirmed that it was currently under review, and that he understood that an electronic version had been sent to the Claimant.

76. The Claimant replied to Mr Maslen later that day, noting that his contract stated that grievances should be raised with the Sales Director, i.e. Mr Berry, whose role that was at the time, and that in view of that he did not think that the request that he should wait for Mr Maslen to return to be reasonable. He concluded by saying, "*accordingly, I would be obliged to have my meeting with Dave on 11 October 2024. As this was the date previously suggested by Dave.*".

77. Mr Maslen further replied, noting that the Claimant had correctly raised the grievance with the Sales Director but that he, i.e. the Sales Director, was not obliged to chair the meeting, that it could be heard by any director of the company, and was to be chaired by Mr Maslen himself. He further noted that, as the company grievance procedure stated, the meeting would be held within five days unless a reason was given for a delay. He noted that the good reason was that he was out of the country.

78. The Claimant further replied the following day, 11 October 2024, at 8.04 am, noting that, as Mr Maslen had said, any director could hold the meeting, and therefore it was unreasonable for him to have to wait when there were two directors available. He confirmed that he would be happy to see Mr Berry or Mrs James that day.

79. Later that day, Mr Berry sent the Claimant a formal letter acknowledging the grievance, and noting that a meeting would be held on Tuesday 15 October 2024 at 10.00 am to consider it. The Claimant replied at 12.28pm, thanking

Mr Berry for the invitation and noting that he would unfortunately decline it as it did not meet the deadline of 11 October 2024.

80. Mr Berry emailed the Claimant further at 1.36pm, noting that the ACAS guidelines were simply guidelines, and that although they tried to comply with them they were a small company with limited resources and also had to take account of the external HR consultants' availability. Mr Berry noted that the meeting date proposed was only two working days later than the deadline the Claimant had suggested. He concluded by assuring the Claimant that the grievance had been taken very seriously, and that he was keen to address the concerns raised. He noted however, that the company could not move forward without the Claimant's input, and he encouraged him to reconsider attending the meeting as it was an important step in resolving the issues he had brought to light. He confirmed that if the scheduled date was not feasible the Claimant should let him know so that they could explore alternative dates in the following week.

81. The Claimant sent a further email to Mr Berry, Mr Maslen and Mrs James at 3.01pm on 11 October 2024, just after finishing work on that day, informing them that he was resigning with immediate effect due to ongoing issues not having been dealt with, reinforcing his beliefs that the company was not operating in good faith and upholding its duty of care.

82. Mr Berry emailed the Claimant later that evening, at 6.57pm, acknowledging the email, and noting that he had been surprised to receive it. He noted that he still wished to address the concerns raised by the Claimant, and asked him to contact him by 16 October 2024 to arrange an informal discussion or a formal grievance meeting. He also noted that he believed that the resignation had happened in the heat of the moment and had not been carefully considered by the Claimant, and that he wanted to arrange a meeting with him to discuss the decision further and to clarify any issues or concerns that the Claimant had. Mr Berry indicated that if he did not hear from the Claimant by 16 October 2024, he would have no option but to conclude that the Claimant did not wish for the matters to be addressed and he would then accept the resignation.

83. The Claimant then emailed Mr Berry on 15 October 2024, noting that the decision had not been made in anger or in the heat of the moment, and that he stood by his decision to resign. The Claimant's resignation was then processed.

84. The Claimant's evidence about his search for further work, which was not challenged in cross-examination, was that he applied for many jobs over the weekend of 12 and 13 October 2024, had an interview at Premier Inn on the following Wednesday, and started there the following Monday.

85. The Claimant raised a further assertion that Mr Daly had removed him from working on his machine on 8 October 2024. Mr Daly had no recollection of doing so and the point was not put to Mr Simpson in cross-examination, Mr Simpson being the person who the Claimant said in his Claim Form, was the person who worked on his machine instead of him. On balance,

therefore, I did not consider that the Claimant had been removed from his machine, or, if he had, that that would have been anything other than a straightforward management direction.

Conclusions

86. Applying my findings of fact and the applicable legal principles to the issues I had to determine, my conclusions were as follows.

Unfair dismissal

87. First, I needed to assess whether the separate acts said to amount to a breach of the implied duty of trust and confidence had taken place in fact. II was satisfied that some had, although not all.

88. As I noted in my findings I did not consider that the Respondent had blamed the Claimant for the accident he suffered at work, nor that it had insisted that he undertake more work despite being impacted by his injury, nor that it had failed to hold a meeting on 13 September 2024 that had been proposed the day before, nor that it had accused the Claimant of causing trouble by raising health and safety concerns.

89. I was however satisfied that Mr Daly had, in broad terms, told one of the Claimant's co-workers, although not more than one, that he should not be led by the Claimant. Whilst there was no direct evidence on the point, it also seemed to me that that discussion with the one co-worker led to comments being made by other colleagues. It was also clear that Mr Daly had refused to speak to colleagues about their comments, instead looking to Mr Maslen to have that conversation with them.

90. It was further clear that the Claimant had been given a disciplinary warning without advance notice. I was not satisfied that the Claimant was not given evidence of the concern raised, as, whilst it was clear that he had not been given any evidence in advance, the allegation was simply that he had left site early without authority, which was factually clear and was not disputed by the Claimant.

91. I was also satisfied the Respondent had failed to respond substantively to the Claimant's appeal against his warning, in that it was clear the outcome letter which had been prepared had never been printed, and thus was never passed to the Claimant. I was, however, satisfied that that was simply a mistake by Mrs James.

92. I was not satisfied that the Respondent had failed to hold a meeting in relation to the Claimant's grievance within a reasonable time of him raising it on 3 October. That was a Thursday, and the grievance was acknowledged the following Monday, 7 October. By that stage Mr Maslen was on holiday, and he was not due to return until the following Monday, 14 October. Email exchanges then took place between the Claimant and Mr Berry about the holding of the meeting.

93. Whilst the ACAS Code states that employers should arrange for a formal meeting to be held without unreasonable delay and the ACAS Guide says that the meeting ideally should take place within five working days, that is dependent on the circumstances. Bearing in mind that Mr Maslen was not available until the following week, and also that the HR consultant the Respondent wished to have in attendance at the meeting was also not available until 15 October, I did not consider that it was unreasonable for the meeting to be scheduled when it was. The Claimant himself, whilst initially looking for the meeting to be held within five working days of his submission of the grievance i.e. on 10 October, indicated that he was happy for it to take place on Friday 11 October. The meeting was then scheduled for the morning of Tuesday 15 October, just two working days later than the Claimant would himself have been comfortable with.

94. I was further not satisfied that the Claimant had been removed from working on 8 October 2024, and finally I did not consider that the Respondent had failed to hold a grievance meeting on 11 October. Whilst that happened in fact, no indication of a meeting being held on that day had been given to the Claimant, only that the Respondent would do its best to arrange a meeting by that date. In the event, as I have noted, that was not possible, and that meeting was arranged for two working days later.

95. I then moved to consider whether the matters I found had taken place breached the implied term of trust and confidence, i.e. whether they amounted to behaviour on a part of the Respondent that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent.

96. On balance, I did not consider that it had. As I have noted, most of the alleged acts said to cumulatively amount to a breach of the implied term of trust and confidence did not occur as asserted. Some did; Mr Daly's refusal to speak to the Claimant's colleagues, the giving of a disciplinary warning without notice, and the failure to respond substantively to the Claimant's appeal against the disciplinary warning.

97. With regard to those matters, Mr Daly was not a director, and, whilst he was the most senior person on site at the particular time, he was not someone who dealt with HR issues. It was not, in my view, unreasonable for him to pass the matter on to Mr Maslen to address, it being understood by everyone that Mr Maslen would be in attendance at the Respondent's premises that afternoon.

98. With regard to the imposition of the warning, as I have noted, the Respondent did give the Claimant a warning without any advance notice, which clearly breached the terms of the ACAS Code. I did not consider however, that that was done with any malign intent, it was simply a reaction, albeit an inappropriate reaction, to the clear evidence that misconduct had occurred. In that regard I noted that the Claimant, in his appeal against the warning, accepted that that his behaviour had been unacceptable.

99. Notwithstanding the clear breach of the terms of the ACAS Code, I noted that the warning given was the most lenient possible, i.e. a verbal warning, and, although the Claimant could justifiably have been concerned about procedural failures, it did not seem to me that the imposition of a verbal warning in such circumstances was, itself, unreasonable. Consequently, I did not consider that it could reasonably be said that the imposition of the warning without advance notice would be likely to have destroyed or seriously damaged the relationship of trust and confidence.

100. Similarly, whilst the Respondent did not provide the appeal outcome to the Claimant, I have noted that was a simple human error, and again, in my view, was not done with malign intent. I also noted that the Claimant did not raise any material concern about the lack of an appeal hearing or appeal outcome prior to his resignation.

101. Overall therefore, I did not consider that there had been a breach of the implied term of trust and confidence. It appeared to me that the Claimant's particular concern when resigning was the failure to hold the grievance meeting in the timeframe that he had expected. However, as I have noted, I did not think that there was anything unreasonable in the Respondent not proceeding to arrange the grievance meeting within the timeframe stipulated by the Claimant in the circumstances that prevailed, and where the meeting was arranged for two working days later. I noted in particular the guidance from the EAT decision of ***Blackburn v Aldi*** that failing to hold a meeting in accordance with any timetable would not necessarily contribute to, still less amount to, a breach of the implied term of trust and confidence.

102. The Claimant's constructive unfair dismissal claim therefore failed.

<u>Protected disclosure detriment</u>

103. My first step was to consider whether the Claimant had made a protected disclosure. The disclosure he said he made related to the red engine hoist and potential dangers to safety in using it.

104. Whilst it was clear that the Claimant had indicated that he was not happy using the red engine hoist, what he specifically said to Sean Daly in particular in September 2022, and also potentially to others, was not particularly clear. The Claimant's own evidence did not appear to take what he said further than indicating that he was not happy using it as it could potentially tip over. It was clear however that other employees continued to use it, and indeed that the Claimant himself continued to use it on rare occasions, albeit only because he felt he had no other option. The Claimant was also content to work on his machine after other employees had used the red engine hoist to manoeuvre material into position.

105. On balance, whilst, as I have noted, the Claimant clearly did raise some concerns over the use of the red engine hoist, I did not consider that he made a protected disclosure in raising those concerns. In order for the matter to qualify as a protected disclosure, the Claimant must have reasonably believed that what he was saying tended to show that the health

or safety of any individual had been, was being, or was likely to be endangered. In that regard, I noted that it was the prospect of endangerment that the Claimant was indicating a concern about, but, as I have noted, other employees used the hoist, as indeed did the Claimant, albeit rarely. I considered that had the Claimant been concerned that the health or safety of an individual was likely to be endangered he would not have used the hoist at all, and would have raised concerns about others using it as well.

106. Regardless of my conclusions with regard to there having been a protected disclosure, I would not, in any event, have considered that the acts of detriment that the Claimant asserted took place had taken place because of any protected disclosure.

107. In terms of the allegations of detrimental treatment, the only two which I found as a fact occurred were the refusal by Mr Daly on 20 Sept 2024 to make clear to the Claimant's colleagues that he did not appreciate their banter, and the giving of a disciplinary warning without advance notice.

108. As I have noted, I did not consider that Mr Daly's actions were, in any sense, unreasonable and therefore did not consider that they could have amounted to a detriment. The imposition of the disciplinary warning without notice was however unreasonable, and could then clearly have been said to be to the Claimant's detriment. However, I did not consider that the Respondent, in the form of Mr Maslen who imposed the disciplinary warning, had any disclosure or concern the Claimant had raised about the red engine hoist in mind when imposing it.

109. As I have noted, the Claimant had clearly been guilty of misconduct in leaving the site without notice substantially before the end of the working day, and whilst there were clear procedural failings, the imposition of the warning itself was not unreasonable.

110. In addition, I noted that the Claimant had indicated that he had been raising concerns about the red engine hoist since August 2022 i.e. over two years before the matters complained of. I also noted that the Claimant had only rarely used the red engine hoist subsequent to 2022, and therefore any circumstances in which he may have repeated his concerns about using the machine would only have rarely arisen.

111. It seemed to me that had the Respondent been motivated to act to the Claimant's detriment by reason of the concerns he had raised about the red engine hoist, then it would have acted much earlier than September 2024. I had in mind particularly the fact that the Respondent paid full sick pay to the Claimant for six months, including the time spent on phased return, when had it had concerns about the Claimant having made protected disclosures, and having been something of a nuisance as a result, it would not have been likely to have done so.

112. Even therefore had the Claimant made a protected disclosure, I did not consider that any detrimental treatment in the form of the imposition of the

disciplinary warning without notice would have happened on the ground that he had made the protected disclosure.

113. For all of those reasons therefore, the claim of protected disclosure detriment failed.

Unauthorised deductions from wages

114. I noted that the Claimant's main concern here was that he should have been paid for the time he spent going home to change from his uniform. However, as I noted in my findings, I did not consider that there was any direction that the Claimant had to go home to change before doing anything.

115. He appeared to rely on his interaction with Mr Daly in 2019 as giving rise to such an obligation, but I did not consider that that involved any direction to the Claimant that he was prohibited from literally doing anything other than going home to change before doing anything else. In any event, the Claimant accepted that he would always have been able to have changed at work, and that would have been able to have taken place before clocking out, i.e. in circumstances where he would still have been at work and been paid. I did not therefore consider that the Respondent had failed to pay any wages to the Claimant in respect of that matter, and therefore there had not been any unauthorised deduction.

116. It was accepted however, that there was a sum due to the Claimant in respect of the incorrect calculation of attendance bonuses, and the parties accepted that the sum of £28.14 should be paid to the Claimant by the Respondent in respect of that. I therefore directed that that sum be paid.

Authorised for issue by

Employment Judge S Jenkins

24 September 2025

Sent to the parties on:

13 October 2025

For the Tribunal Office:

Adam Holborn