# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Hadley

**Respondent:** Air Canada

**Heard at:** Reading

**On:** 9 and 10 September 2025
(panel only) 11 September 2025
12 September 2025

**Before:** Employment Judge Hawksworth
Ms A Crosby
Ms B Osborne

**Appearances:**
For the claimant: Mr P Powlesland (counsel)
For the respondent: Mr L Harris (counsel)

**JUDGMENT** having been sent to the parties on 6 October 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

# REASONS

**Introduction - issues, hearing and judgment**

1. The claimant's claim is about what pay he was entitled to while working an agreed phased return to work following sickness absence.

2. Page references in these reasons are to the bundle which was agreed for the final hearing.

3. The issues for decision in the claim were set out in a list of issues (page 566 to 568). The list was agreed by the parties after discussion about the claims and issues at a preliminary hearing on 1 October 2024 (page 43). There were some later changes to the agreed list:

   3.1. One issue was added to the list in a case management order made by Employment Judge Anstis on 1 September 2025, that was included in the list as issue 2.1.5 (page 569); and

3.2. By the start of the final hearing, the respondent had agreed that the claimant was disabled at the relevant time within the meaning of section 6 of the Equality Act 2010. Therefore issues 1.1 and 1.2 (disability) were no longer issues for the tribunal to decide.

4. The hearing took place in person over four days from 9 to 12 September 2025. After reading the witness statements, we heard evidence from the claimant from about 12.00 on 9 September. The respondent's witnesses started giving their evidence towards the end of that day and finished by the lunch break on 10 September. We heard from the respondent's managers Sophie Cranfield, Graham Bristow and John Lloyd. Closing comments were made on the afternoon of 10 September.

5. After a deliberation day on 11 September, we told the parties our decision and our reasons at a hearing on 12 September, explaining our findings of facts, and the conclusions we reached by reference to the relevant legal principles. In these written reasons, our summary of the law has been included as a separate section, and this introduction has been added.

6. The judgment of the tribunal was unanimous. We decided that the claimant's claim succeeded in part. In short, the claimant succeeded in relation to the question of his entitlement to pay, but we decided that there had not been disability discrimination:

6.1. The complaint of unauthorised deductions contrary to sections 13 and 23 of the Employment Rights Act 1996 succeeded.

6.2. The complaint of failure to make reasonable adjustments failed and was dismissed.

7. After we gave our judgment on liability we took a short break during which the parties agreed the amounts for the remedy. We ordered the respondent to pay the claimant £6,124.60 in respect of deductions from wages for the period August 2023 to April 2024 and to pay £734.96 to the claimant's pension scheme in respect of employer pension contributions for the same period. (These figures were agreed by the parties.)

8. The claimant's solicitors requested written reasons on 15 September 2025. The judge apologises for the delay in providing these written reasons. This was because of a period of leave and the current volume of work in the tribunal.

## Findings of fact

9. This claim concerns the interpretation of Air Canada's sick pay scheme, which, for employees who started working for Air Canada before July 1998, as Mr Hadley did, is a generous scheme. The entitlement under the scheme is to sick pay equivalent to full pay for 975 hours per calendar year, and after that, to sick pay equivalent to half pay for an indefinite period until recovery, retirement, or death. We set out our more detailed findings of fact about the sick pay scheme below.

10. We start with an outline of our findings about what happened. We do not need to go into too much detail because much of this was agreed, but we found it helpful to set out the chronology.

Absences and phased returns

11. Mr Hadley started employment with Air Canada on 6 May 1997. More recently he has developed a health condition which Air Canada accepts is a disability.

12. In April 2020, Mr Hadley had some time off work for sickness. An occupational health report dated 31 July 2020 recommended that he have a phased return to work, starting by working 50% of his normal 12-hour shift and building up to normal hours (page 320).

13. There was then a period of furlough during the pandemic following which Mr Hadley returned to work in October 2021. At that time Mr Hadley was working 6-hour shifts in line with the earlier advice. He saw an occupational health advisor on 16 November 2021 (page 323). The occupational health advisor recommended that reduced hours should continue for a period of four weeks.

14. The following year, in October 2022, Mr Hadley saw an occupational health advisor again (page 326). At this time, he was still working reduced hours. The occupational health advisor recommended increasing his hours in a phased manner.

15. Mr Hadley's GP signed him off sick on 15 November 2022 (page 235). There was then a period of about 6 weeks when Mr Hadley was not at work at all. Another occupational health report was produced on 28 December 2022 (page 329). It recommended a phased return to work. In line with that advice, when he returned to work on 1 January 2023, Mr Hadley started working 6-hour shifts ( 50% of his normal hours).

16. In the period after that return to work on 1 January 2023, and up to 5 November 2023, there were some short periods of sick leave but Mr Hadley was mostly at work. As to the number of hours he was working, he had some periods where his hours dropped below six per shift, and some other periods where he was able to work for more than six hours per shift. For the most part, he was working 6-hour shifts, that is, he was working 50% of his normal hours. He did not return to full hours in this period.

17. For each shift on which Mr Hadley worked reduced hours as part of a phased return, there were some remaining hours which were part of his normal shift but during which he was not working. For example, when he was working 6-hour shifts, he did not work the other 6 hours of his normal 12-hour shift. We call the hours which Mr Hadley was not working when on a phased return 'the unworked hours'. We have used that shorthand to describe those hours. We call time when Mr Hadley was not at work at all 'sick leave'.

Mr Hadley's pay

18. During much of the time when he was on a phased return to work, Mr Hadley

received full pay.

19. On 16 August 2023, Mr Hadley received a letter from Air Canada's payroll manager (page 383). It said that on 12 May 2023 he had exhausted his entitlement to full sick pay and that he should have been paid half pay for sickness from that date. It said that going forward he would receive half pay for sickness. The letter noted that any unworked hours would count towards sickness entitlement and would be paid at half pay.

20. Mr Hadley asked for a calculation of how he had exhausted his sick pay entitlement and the respondent provided a breakdown (page 350). The calculations showed that:

    20.1. All Mr Hadley's unworked hours had been recorded as sickness hours counting towards his entitlements to sick pay;

    20.2. all unworked hours and sick leave in both 2022 and 2023 had been treated as one occasion of sickness absence;

    20.3. from 1 January 2023 to the end of July 2023, Mr Hadley had been paid full pay for 316.2 hours which had been recorded as sickness hours.

21. Air Canada did not seek to recover what it regarded as an overpayment of sick pay for the period from 13 May to 16 August 2023.

22. There was a delay in implementing the reduction in sick pay from full pay to half pay. Mr Hadley continued to receive full sick pay until October 2023. In his pay in October 2023, there was a recovery in one lump sum of half the pay Mr Hadley had had received for unworked hours in the period from 17 August to October 2023. From November 2023 onwards, Mr Hadley received half pay for unworked hours. (He was still paid full pay for the hours he was working.)

23. The respondent has accepted that it had a practice of also counting absence for attending hospital appointments in the calculation of sickness hours for the purposes of entitlement to sick pay. We did not have any evidence of this being done in Mr Hadley's case in respect of any specific hospital appointments.

Grievance

24. On 5 November 2023 Mr Hadley had a knee injury at home (page 332). It was unrelated to his disability. He was on sick leave from 5 November 2023 until 5 May 2024 because of that injury and subsequent surgery.

25. Mr Hadley brought a grievance on 7 November 2023 complaining about the reduction in his pay. He said that the unworked hours should not have been treated as sickness hours.

26. Mr Hadley's grievance was considered at the first stage by Mr Bristow, at appeal stage 1 by Mr Lloyd and at appeal stage 2 by Mr Beveridge. It was not upheld at any of those stages. Mr Hadley presented a claim to the employment tribunal on 8 April 2024, after Acas early conciliation from 8 January to 17 February 2024.

27. We heard and read some evidence about Mr Hadley's sickness and return to work after 8 April 2024 (the date of his claim). As no application has been made to amend the claim to include anything postdating the presentation of the claim, those matters are not issues in the claim, although they may be relevant to the extent that they shed light on things that happened before then. We do not make detailed findings of fact about events after 8 April 2024.

Disability-related absences

28. We set out separately our findings of fact about disability-related absences. This is for the purpose of the reasonable adjustments complaint. We have made these findings based on the evidence that we heard and read, including the occupational health reports and the return-to-work forms that we were referred to.

29. We found that the period of time when Mr Hadley was on sick leave because of his disability began on 15 November 2022 and ran to 31 December 2022. This part of our findings of fact focuses on that period and his phased return to work which started on 1 January 2023, after that period of sick leave.

30. The earlier periods of sick leave and phased returns (from 2020 to October 2022) were not because of Mr Hadley's disability, they were for other health reasons.

31. The phased return to work after the disability-related sick leave started on 1 January 2023. Mr Hadley returned to work on 50% of hours, on the recommendation of the occupational health advisor contained in the report of 28 December 2022. That phased return was because of disability. We have referred to it as the disability-related phased return.

32. As we have found, during the period from 1 January 2023 to 5 November 2023, Mr Hadley was mostly at work on a phased return. After 5 November 2023 Mr Hadley was on sick leave because of his knee injury; he remained on sick leave in April 2024 when the claim was presented.

33. The return-to-work procedure in the collective agreement provided for employees to have return to work interviews (page 151). It said:

> "The purpose of return-to-work interviews is designed to facilitate future attendance at work and in most circumstances will simply be for welfare purposes and to ensure the employee is fit for work. Employees will be required to attend a return-to-work interview with their Department Manager within 4 business days of returning to work (under normal circumstances)."

34. We make the following findings about Mr Hadley's return to work meetings:

    34.1. Mr Hadley did not have a formal return to work meeting when he returned on 1 January 2023.

    34.2. During the disability-related phased return, Mr Hadley had some periods of sick leave. The respondent only carried out one recorded return to work meeting with Mr Hadley during this time. That meeting took place on 3 October

2023 (page 558). That was more than 4 days after Mr Hadley's return to work, because it was in respect of disability-related sick leave on 9 and 10 September 2023.

34.3. Mr Hadley told us that there was an occasion more recently in August 2024, when two periods of absence were dealt with at one return to work meeting which was held more than four days after both of the absences. We accept Mr Hadley's evidence on this because it was supported by the written record of the meeting (page 312). Although this meeting post-dates the claim, it sheds light on the respondent's practices in relation to return to work meetings.

35. Based on these findings, we accept that Air Canada's practice in relation to return to work interviews was not adequate, in the sense that on some occasions there was a failure to conduct them at all and on some occasions they were conducted later than required by the collective agreement.

36. During the disability-related phased return, Mr Hadley had some other discussions with his manager which were not recorded. We make this finding because Mr Hadley accepted that his working hours varied at times during the disability-related phased return, and that the changes were made in discussion with his manager.

<u>The sick pay scheme</u>

37. Paragraph 6 of Mr Hadley's contract of employment provides for a sickness and injury benefit scheme (page 54). It says:

> "The company operates a sickness and injury benefit scheme, details of which are set out in your copy of the Collective Agreement."

38. Everyone agrees that the relevant agreement is the collective agreement made in 2015 and that the rights under the sick pay scheme set out in that collective agreement are part of Mr Hadley's contract.

39. The 2015 collective agreement covers the period 2015 to 2019. A new collective agreement has been concluded more recently but everyone agrees that the provisions that we are concerned with have not changed in any material way.

40. The sick pay scheme is contained in two places in the 2015 collective agreement, possibly because of the way in which the collective agreement has been agreed over time. The parties agree that, although there are slight variations in wording between the two versions, there are no material differences. The provisions about entitlement to sick pay that we focused on during the hearing start at page 154.

41. Under a heading "Sick/Accident Leave – General", the agreement says:

> "Employees will be granted company sick/accident pay in accordance with the following chart:
>
> Length of service Working days Hours

| | | |
|---|---|---|
| Up to 3 months | Nil | |
| Up to 6 months | 30 | 225 |
| Up to 9 months | 35 | 263 |
| Up to 12 months | 40 | 300 |
| 12 months to 24 months | 45 | 338 |
| 24 months to 36 months | 60 | 450 |
| 36 months to 48 months | 90 | 675 |
| 48 months and over | 130 | 975” |

42. The chart sets out sick pay entitlements which vary according to length of service. For employees with 48 months of service and over, like Mr Hadley, the entitlement is to full pay for 975 hours per calendar year. After that the entitlement is to half pay until the earliest of recovery, retirement, or death.

43. Under the chart are some further details about the scheme. After a sub-heading saying ‘NOTE:’ a paragraph on page 154 says:

> “Should sickness be of such duration that it overlaps from one year into the next, the maximum paid sick leave for the period of sickness will be in accordance with the above table. In any one calendar year, paid sick leave may not be higher than the amount stated.”

44. This note (‘note 1’) establishes an exception to the normal position that employees are entitled to 975 hours of full sick pay for each calendar year. The exception applies when a period of sickness overlaps two or more calendar years. The maximum entitlement to full sick pay for one period of sickness absence is 975 hours in total, not 975 hours in each calendar year. Put another way, where a period of sickness is ongoing across two calendar years, the annual entitlement does not reset in January.

45. There is another ‘NOTE:’ on page 155 (‘note 2’). It says:

> “The payment will only take effect once the employee has been absent for a period of 7 consecutive calendar days. If at any time during the injury absence entitlement, the employee returns to work and then reports sick again with the same medical condition, supported by a G.P.’s medical certificate (Med3), shift pay will continue to be paid from day one of the sickness, as though there has been no break in the sickness.”

46. We were also referred to a document dated 22 March 1996 (page 452) (‘the 1996 document’). It was headed ‘Company Sick Plan’ and was sent ‘to all department heads’. Part of this document said (emphasis added):

> “Our Working Conditions is [sic] silent on the matter of entitlements when an employee returns to work and then goes sick again. In the obvious cases where an employee is returning just to gain a further entitlement, the Company’s position is that this should not be the case. He or she should be returned to either nil pay or 50% pay, the time record card showing either SX or SA 50%. As a general rule and to ensure

consistency in application, I have reviewed our policies in Canada and propose that we apply the same rules. These are as follows:

- If employee falls sick, for any reason, or is injured at work, during a thirty (30) day calendar period from the date that he or she last returned to work, the employee would be returned to either nil pay with time card to show SX, plus a note at the bottom of the card as a reminder, or to 50% pay with time card to show SA 50%, again with a note at the bottom of the card. Beyond thirty days the employee would then be eligible for a further entitlement of sick pay at the 100% level, based on Company Service, assuming also that the reason for sickness is wholly different from the previous period of sickness.

- If employee falls sick for the same reason as his or her previous sickness, during a hundred and eighty (180) day calendar period from the date that he or she last returned to work, the employee would be returned to either nil or 50% pay as above. Beyond one hundred and eighty days, the employee would then be eligible for a further entitlement of sick pay at the 100% level, based on Company Service."

**The law**

Unauthorised deduction from wages

47. Section 13 of the Employment Rights Act 1996 says:

"(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer."

48. Under section 23, a worker can present a complaint to the employment tribunal that their employer has made a deduction from their wages in contravention of section 13.

49. The tribunal must decide what wages were 'properly payable' to the claimant. This includes resolving any disputes as to the meaning of a contract, including questions of interpretation and implication (*Agarwal v Cardiff University and another* 2019 ICR 433, CA).

Reasonable adjustments

50. The Equality Act imposes a duty on employers to make reasonable adjustments. The duty comprises three requirements, in this case, the first requirement is relevant. This is set out in sub-section 20(3):

> "The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."

51. Paragraph 20 of schedule 8 of the Equality Act says that an employer, A, is not subject to a duty to make reasonable adjustments:

> "if A does not know, and could not reasonably be expected to know –
>
> …
>
> (b) … that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement."

52. The EHRC Code of Practice describes the duty to make reasonable adjustments as:

> 'a cornerstone of the Act which requires employers to take positive steps to ensure that disabled people can access and progress in employment. This goes beyond simply avoiding treating disabled workers, job applicants and potential job applicants unfavourably and means taking additional steps to which non-disabled workers and applicants are not entitled'.

53. In *O'Hanlon v Commissioners for HM Revenue and Customs* 2007 ICR 1359 the Court of Appeal considered the question of disability-related absence and sick pay. The court upheld the decision of the tribunal and the EAT that the Equality Act does not require an employer to pay full pay for all disability-related sickness absence. Paying full pay indefinitely would act as a disincentive for an employee to return to work. Only in exceptional circumstances would it be reasonable to expect an employer to pay an employee's salary in full for disability-related absence after entitlement to sick pay under the rules of a sick pay scheme have been exhausted.

## Conclusions

54. We start with the unauthorised deductions from wages claim. We decide what the sick pay scheme means, what Mr Hadley was entitled to and whether the respondent made unauthorised deductions from his wages. After that we come on to the reasonable adjustments complaints relating to pay. Finally, we explain our conclusions in the complaints of failure to make reasonable adjustments in relation to the return-to-work interviews, appointments, meetings, and check-ins.

<u>Unauthorised deduction from wages</u>

55. The complaint about unauthorised deduction from wages is brought under sections 13 and section 23 of the Employment Rights Act 1996. We decide whether the wages paid to Mr Hadley during the relevant period were less than the wages properly payable to him at that time. That requires us to resolve any differences in interpretation of the contract between Mr Hadley and Air Canada.

56. There are two main questions of interpretation for us about the sick pay scheme in the context of unworked hours during a phased return. Mr Hadley and Air Canada have different views about how the scheme should be interpreted in relation to both these questions.

    56.1. The first question is whether the unworked hours fall under the sick pay scheme at all: should they be treated as sick leave under the scheme and should sick pay be used to top up pay for hours worked during a phased return? In the hearing, we called this 'the top up point' for short. If we answer yes to that question (yes, unworked hours should be treated as sick leave under the sick pay scheme) the second question arises.

    56.2. The second question is, if the unworked hours are treated as sick leave, does the phased return period count as one period of sickness so that, if a phased return overlaps two calendar years, the sick pay entitlement for the phased return period is 975 hours in total, not 975 hours per year. Put another way, if the unworked hours are treated as sick leave, does the sick pay entitlement reset in January each year or not? We called this 'the reset point'.

57. At this stage we are looking at the interpretation of the contract (contained in the

collective agreement). We come on later to the question of disability discrimination.

Top up point

58. The collective agreement does not say whether unworked hours during an agreed phased return to work fall within the sick pay scheme or not. There are no separate provisions in a disability or equality policy which might assist in understanding this because Air Canada does not have either of those policies.

59. Mr Powlesland, on behalf of Mr Hadley, said that the unworked hours in a phased return should not be treated as sick leave. Mr Harris and the respondent's witnesses, on behalf of the respondent, said that the unworked hours had to be recorded in some way and that, as they were periods of absence from work for a health reason, they should be recorded as sickness absence. They put this as a binary choice: time during the phased return was either working or sick leave.

60. We have decided that the proper interpretation of the contractual sick pay scheme is that unworked hours during a phased return to work should not be treated as sick leave. We reached this conclusion for the following reasons:

60.1. In order to treat unworked hours as sick leave, that would need to be agreed, either in the contract or at some other point. Neither the claimant's individual contract nor the collective agreement said that unworked hours would be treated in that way. The sick pay scheme does not define sickness as including unworked hours during a phased return to work. There is no other provision in the contract that provides that parts of a phased return to work should be treated as sickness absence.

60.2. The wider context of the sick pay provisions in the collective agreement does not support an interpretation that sickness includes unworked hours without this being said expressly. The natural and obvious meaning of sick leave does not extend to include unworked hours in this way: unworked hours are not the same as sick leave. On every occasion on which Mr Hadley worked during a phased return, he was fit to work and he was working a part shift that had been agreed by the respondent. He was not sick. He had been confirmed as fit to work by his GP and by the respondent's occupational health.

60.3. The respondent did not treat the absence as sick leave for any purpose other than for pay. It did not require a sick certificate or regular return to work meetings for each occasion of unworked hours.

60.4. There was no subsequent agreement, whether written or oral, between Mr Hadley and Air Canada (or between his union and Air Canada). For example, at the time Air Canada agreed that Mr Hadley would have a phased return to work, there could have been a discussion and a recorded agreement that unworked hours would be treated as sick leave and would therefore reduce the annual entitlement to sick pay. However no such discussion or agreement occurred.

60.5. We do not accept that there was a binary choice (only two options) for

recording time during the phased return to work, as either work or sick leave, so that every hour Mr Hadley was not working during a phased return had to be recorded as sick leave. Air Canada uses a number of different non-working time codes such as bereavement, carer's leave, family leave, vacation leave, time bank, trade union business and travel time. It would have been open to Air Canada to record unworked hours as 'unworked hours on a phased return' rather than sickness. It was open to them to adapt their codes to cover this scenario.

60.6. We have taken into account that Mr Hadley said in the course of proceedings that unworked hours might be treated as sick leave. However, at the time, in his grievance, he said clearly that his position was that he did not think there was any provision permitting unworked hours to be treated as sickness absence. In any event, we do not think that this affects the contractual position which was agreed in the collective agreement between the employer and the union.

61. We have decided for these reasons that the terms of the agreement between the parties did not permit Air Canada to treat unworked hours as sick leave. Air Canda could not unilaterally decide to do so. It was not open to them to simply record the claimant's unworked hours in that way without a provision in the contract that permitted it. The hours should have been recorded in a different way.

62. We appreciate that, in Mr Hadley's case, his phased return was longer than might have been anticipated. We do not think that this means the contract should be interpreted differently as a result. It might be seen as a lacuna or a gap in the contractual provisions that there is nothing explaining how unworked hours in a phased return to work would be recorded. However, that was a matter for the parties to discuss and decide what they wanted to say. If the respondent had wanted to adopt an approach that was not contained within the contractual provisions, it was open to it to discuss that with Mr Hadley and his union to try and reach a subsequent agreement.

63. Our conclusion that unworked hours are not to be treated as sick leave gives rise to the important question of what was properly payable to Mr Hadley for unworked hours during his phased return to work. We have decided that the proper question for us here is whether there was a contractual right to reduce Mr Hadley's normal pay during a phased return. Mr Hadley was ready and willing to work and by agreement he was not being required to work his full hours. The sick pay scheme did not permit reduced pay during a phased return. The respondent has not put forward any other provision that would have permitted the deduction from wages during an agreed phased return to work.

64. As we have decided that unworked hours should not be treated as sickness absence, there was no right to reduce pay. The reduction of pay for unworked hours from full pay to half pay therefore amounted to an unauthorised deduction from wages. The unauthorised deduction relates to the period from August 2023 onwards. As we have explained, for the purposes of the claim, the period goes up to 8 April 2024, the date the claim was presented, but obviously the principle remains the same for deductions after that date.

65. Those are our conclusions on the top up point.

Reset point

66. As we have decided that Mr Hadley's unworked hours should not be treated as sick leave, the reset point falls away. But, in case we are wrong about the top up point, we have gone on to consider the reset point in any event.

67. The question here is if, contrary to our conclusion on the top up point, unworked hours are properly to be recorded as sick leave, does the entitlement to sick pay reset at the end of each calendar year, or does the overlapping years exception apply in respect of a phased return period? Put another way, for a phased return which overlaps two calendar years, is the maximum entitlement for sick pay for unworked hours 975 hours in total, or 975 hours per calendar year?

68. A key part of this is how the terms 'duration' of sickness and 'period of sickness' which are used in note 1 to explain the exception, should apply to periods of unworked hours during a phased return. Mr Harris said the entire phased return period should be treated as one period of sickness, because Mr Hadley had never fully returned to work after a period of sick leave. On the respondent's interpretation, only a return to full working hours can mark the end of a period of sickness.

69. We have decided that is not the proper interpretation of the contract. The proper interpretation (if unworked hours are to be treated as sick leave) is that a period of sickness, for the purposes of the exception in note 1, is brought to an end by the start of a phased return to work. We reach this decision for the following reasons:

    69.1. There is no definition of 'duration' of sickness" or "period of sickness" in the agreement and very little detail on what is to be included in a period of sickness. The collective agreement does not say that a period of sickness includes a phased return period. If the union and Air Canada had wanted to define a period of sickness in this way, the agreement could have done that, but it did not.

    69.2. It is not a natural reading of the words "sickness absence" to include a period of phased return within them. The natural meaning of a period of sickness would not include a period where an employee is working each shift they are required to work for an agreed number of hours.

    69.3. The contract does not say that a period of sickness lasts until an employee returns to work on full hours. Note 2 relates to what should happen when an employee returns to work and then 'reports sick again'. That is not the same as an employee working reduced hours by agreement. During Mr Hadley's phased return to work, the employer did not treat the unworked hours as periods when he 'reported sick'.

    69.4. A phased return includes some work and some absence. In Mr Hadley's case, the balance of work and absence was broadly even as the agreement was that he worked six hours on most shifts, leaving six unworked hours. It

would not be natural to describe his status during this phased return as being on a period of sickness during which he did some work. It is far more natural (and reflects the language which is commonly used, for example, by the parties and in the Occupational Health reports) to consider the phased return as a period of work on reduced hours, or a period of work during which there are some absences. The "Prolonged absence" section of the collective agreement describes the situation where an employee returns to work with recommended restrictions. This was Mr Hadley's position. The use of the term "return to work" in that provision supports the interpretation that an employee on a phased return, has returned to work with some restrictions, rather than being on a period of sickness during which they can do some work.

70. Our alternative conclusion on the reset point therefore, in respect of the proper interpretation of the terms 'duration' of sickness and "period of sickness" is that, if regular periods of unworked hours are treated as sick leave, they should be treated as individual periods of sickness counting towards the maximum hourly entitlement and not as one ongoing period of sickness.

71. This means that the sick pay entitlement resets at the end of each calendar year for an employee who is on a phased return to work. even where the phased return overlaps two calendar years. This is because they have returned to work and are no longer on a period of sickness. The overlapping years exception in note 1 does not apply to a phased return period.

72. In Mr Hadley's case, this means that (even if we are wrong about the top up point) there was no period of sickness overlapping 2022 and 2023. His period of sickness started on 5 November and came to an end on 31 December 2022 because he returned to work on 1 January 2023. He had not reached 975 hours of sickness absence in the calendar year 1 January to August 2023 and he had not exhausted his sick pay entitlement for 2023. Even if we are wrong about the top up point, it was an unauthorised deduction from Mr Hadley's wages for Air Canada to reduce his pay under the overlapping years exception in note 1 (the reset point).

<u>The 1996 document</u>

73. Finally in relation to the complaint of unauthorised deductions, we explain our conclusions about the 1996 document. Our conclusions on both the top up and reset points are unaffected by that document.

74. As we understand it, Air Canada says that the provisions in this note have become part of the sick pay scheme as a result of long-standing practice. We have concluded that this document did not form part of Mr Hadley's contract of employment for the following reasons:

74.1. First of all, it was not an agreed variation of the sick pay scheme. It was produced by the employer on a unilateral basis and put forward a 'proposal'. There was no separate agreement between the parties to the collective agreement or between the respondent and Mr Hadley to include these additional terms. Neither Mr Hadley nor the union had been shown the terms or invited to agree them. We did not have evidence from which we could

conclude that there was a tacit agreement that these additional terms should be part of the contract without them needing to be confirmed any more clearly. As we say, only the employer was aware of them.

74.2. The 1996 document pre-dated a later issue of the sick pay scheme in the collective agreement. If the intention of the parties in 2015 had been to include the terms of the 1996 document in the sick pay scheme, those terms would have been in the 2015 scheme. They were not.

74.3. The terms of the 1996 document were not implied into the sick pay scheme as a result of being so obvious it would go without saying. The terms were highly detailed and brought in an extra requirement to establish entitlement which was not included in the written scheme. There was no obvious reason why the particular periods referred to in the 1996 document would have been chosen. Any time frame could have been used.

74.4. Equally, they were not implied by practice. The evidence from the respondent's witnesses about how the reset period was intended to operate was inconsistent. There were different explanations of how it would work in practice. We were told that these terms had been applied on other occasions but there was no cogent evidence of this. If the approach set out in the 1996 document had been part of the practice of the sick pay scheme as far back as 1996, we would have expected to have seen more documentary evidence of it being applied and of it being notified to employees and the union. As we have said, the other parties to the contract, Mr Hadley and his union, were not aware of the practice.

Summary – unauthorised deductions

75. In summary on the unauthorised deductions complaint, by paying Mr Hadley half pay for the period August 2023 to April 2024 in respect of unworked hours during an agreed phased return to work, Air Canada made unauthorised deductions from Mr Hadley's pay. The claim was presented on 8 April 2024 after Acas early conciliation. The claim was presented in time in respect of this series of deductions.

76. The complaint under sections 13 and 23 of the Employment Rights Act succeeds.

77. We emphasise that our conclusions on this complaint are highly specific to the particular terms of the contractual arrangements between the employer and the employee.

Reasonable adjustments

78. We come next to the disability discrimination complaints.

79. The reasonable adjustments complaints are brought under sections 20 and 21 of the Equality Act. Mr Hadley says that he is at a substantial disadvantage as a result of PCPs applied by Air Canada, compared to people who are not disabled, such that Air Canada is under a duty to make adjustments to prevent or reduce the disadvantage to him.

80. We start with our conclusions in relation to PCPs 1 and 2. These concern pay for unworked hours. We are considering them separately to the contractual pay position. These PCPs are put as: the respondent's practice of using sick pay entitlement (PCP1) to cover unworked hours in a phased return and/or (PCP2) to fund an employee's reasonable adjustments. These two PCPs are really saying the same thing, that unworked hours in a phased return count as sick leave for sick pay purposes. We found that the respondent applied this practice in Mr Hadley's case when calculating hours for the purpose of sick pay entitlement.

81. Whether put as PCP1 or PCP2, this amounts to a complaint on the same basis as those considered by the Court of Appeal's decision in *O'Hanlon v Commissioners for HM Revenue and Customs*. In that case, the Court of Appeal held that the duty to make reasonable adjustments for disability does not extend to a duty to discount disability-related absence from calculations of sick leave for the purpose of a limited sick pay entitlement. That is because the reasonable adjustments provisions have the purpose of assisting disabled employees to get into, or remain in, employment, not entitling them to be paid for periods when they are not in work. Mr Hadley's case is not an exception to that principle.

82. We decided, based on the specific terms of the respondent's sick pay scheme, that the respondent is not allowed to treat unworked hours as sick pay. For that reason, the complaint of unauthorised deductions succeeded. However, in the context of the disability discrimination provisions, the respondent's inclusion of unworked hours as sick leave to calculate sick pay entitlement did not amount to a failure to make reasonable adjustments.

83. The complaint based on PCP4 concerns hospital appointments. Mr Hadley said he was disadvantaged by the respondent's practice of deducting time spent at hospital appointments from his sick pay entitlement. Air Canada has accepted in the grievance process that it has such a practice. However, we have not been provided with evidence of occasions when this happened in Mr Hadley's case. There was no evidence that he was disadvantaged in relation to specific hospital appointments. If we had found that he was disadvantaged in this way, we would have decided that this fell within the principle established in *O'Hanlon* in any event.

84. Lastly, we explain our reasons in relation to the complaint based on PCP3 and PCP5. PCP5 was added with permission on 1 September 2025. Both these PCPs relate to meetings: the practice of not conducting (PCP3) adequate return to work interviews, or (PCP5) regular meetings or check-ins.

85. This can only relate to periods when the claimant was off work or on a phased return for disability-related reasons. We have found that period to be from 15 November 2022 to 5 November 2023. After that date Mr Hadley was unfit for work for non-disability related reasons, up until the time he presented his claim. Any adjustments to the respondent's practice after 5 November 2023 would not have prevented any disadvantage. This is because Mr Hadley was on full sick leave for other reasons in any event. So, we have identified the relevant period for these complaints as 15 November 2022 to 5 November 2023.

86. We have found that Air Canada had a practice of not having adequate return to work interviews. They failed to have a return-to-work interview in January 2023 and held other disability-related return-to-work meetings more than four days after the four days required by the policy. The practice was not adequate in the sense that it was not in line with the policy.

87. However, the basis on which Mr Hadley says that the failure to conduct adequate return-to-work interviews, regular meetings or check-ins gave rise to a disadvantage to him is unclear. The only disadvantage he relies on is being at risk of losing entitlement to company sick pay. It is not clear how he says that this practice put him at risk of losing sick pay entitlement. That is an essential element of the complaint which is not made out.

Time limit for reasonable adjustments complaint

88. Further and in any event, the complaints based on PCP3 and PCP5 have been brought out of time, even allowing for the extension of time for the Acas early conciliation period. We will explain why we have reached that conclusion as it involves some technical discussion about the dates and the Acas early conciliation period.

89. As we have explained, the last date on which Mr Hadley could have been disadvantaged as a result of these PCPs was 5 November 2023. This is because he was on sick leave for other reasons after that.

90. The primary three-month time limit for bringing a claim about something that happened on 5 November 2023 is 4 February 2024. Under section 140B of the Equality Act, Acas early conciliation extends time for the purpose of calculating that three-month period. Here, the Acas early conciliation period was from 8 January to 19 February 2024. The claim was then presented on 8 April 2024.

91. As the claim was presented more than one month after the early conciliation certificate was issued, the ‘one month after day B’ extension of time in section 140B(4) cannot apply here to make the claim in time.

92. We focus therefore on the extension of time provision in section 140B(3) - the “stop the clock provision”. Under section 140B(3), time spent in early conciliation is not counted as part of the three-month period. The clock ‘stops’ from the day after day A, that is the day after the day on which Acas was notified for early conciliation.

93. In this case, the period from 9 January (the day after day A) to 19 February (the certificate date, or day B) is not counted. That is a period of one month and 10 days. That means the new time limit is one month and 10 days after 4 February 2024. That makes it 14 March 2024. As the claim was not brought until after that date, 8 April, it was out of time in respect of treatment which ended on 5 November. Further we found that 5 November 2023 was the very latest date for the treatment in respect of the failure to carry out a return-to-work interview. The deadline would have been considerably earlier and a complaint in relation to anything before that would be even longer out of time.

94. We did not hear any evidence about any reason why it would be just and equitable for us to extend time to hear the complaints of failure to make reasonable adjustments. The time limit was highlighted in the list of issues as an issue for consideration. In the absence of evidence about this, we have decided that it is not just and equitable to allow the complaints based on PCP3 and PCP5 to proceed.

95. For these reasons, all the complaints of failure to make reasonable adjustments fail and are dismissed.

Remedy

96. After we told the parties our judgment and reasons, we said that, for the purposes of our judgment on remedy, we are looking at deductions during the period from August 2023, in respect of which the first unauthorised deductions were made, to 8 April 2024, when the claim was presented.

97. As we explained, the same principle in relation to pay entitlement applies beyond the date on which the claim was presented, but that will be a matter for the parties to discuss.

98. The amount to be paid to the claimant in respect of the successful complaint of unauthorised deduction from wages was agreed by the parties. Based on the agreed figures, we ordered that the respondent pay the claimant in respect of deductions for the period from August 2023 to 8 April 2024 in the sum of £6,124.60 and that the respondent pay employer pension contributions at 12% for this period, agreed as £734.96.

**Approved by:**
**Employment Judge Hawksworth**
Dated 18 November 2025

JUDGMENT SENT TO THE PARTIES ON

18 November 2025

FOR THE TRIBUNAL OFFICE