



EMPLOYMENT TRIBUNALS

Claimant: Mr Dujon Lecointe

Respondent: Hyperoptic Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: In private by Cloud Video Platform **On:** 24th November 2025

Before: Employment Judge Gidney

Appearances

For the Claimant: Mr Dujon Lecointe (in person)

For the Respondent: Ms Adele Dethick (Solicitor)

JUDGMENT

It is the Judgment of the Tribunal that:

1. The Claimant is in substantial compliance with the Unless Order of Employment Judge Klimov dated 31st October 2025.
2. No relief from the sanction of strike out is necessary.
3. The Claimant's Particulars of Claim is amended to add claims of (i) discrimination arising from disability and (ii) failure to make reasonable adjustments, in the form set out in the List of Issues attached to the Case Management Order of 24th November 2025.

REASONS

1. In this matter I am tasked to determine the issues set out by EJ Klimov in his direction to the parties dated 5th November 2025:

'The hearing is to consider:

1. *Whether the Claimant has complied with condition (i) of the Unless Order.*
2. *If it is determined that the Claimant has failed to comply with the condition (i) of the Unless Order (and consequently, his claim stands to be dismissed) whether the dismissal must be set aside pursuant to Rule 39(2) of the Employment Tribunal Procedure Rules, 2024 (if such relief from sanction application is made by the Claimant).*
3. *If it is determined that the Claimant has complied with the Unless Order or if the Claimant's 'relief from sanction application' was made and granted, whether the Claimant's purported application to amend his claim to add complaints of discrimination on the grounds of race and disability and for redundancy pay should be allowed.*
4. *Any strike out / deposit order application by the Respondent.*
5. *Further case management as appropriate.'*

Issue 1: Has the Claimant complied with condition (i) of the Unless Order?

2. Following a notification to ACAS of a dispute on 29th December 2024 and an Early Conciliation certificate dated 29th January 2025, on 28th February 2025 the Claimant presented claims of:
 - 2.1. unfair dismissal;
 - 2.2. failure provide written terms & conditions;
 - 2.3. wrongful dismissal;
 - 2.4. Unlawful deductions from wages;
 - 2.5. Failure to provide reasons for dismissal;
 - 2.6. Working time Regs (no details).

3. On 17th March 2025 standard directions were issued by the Tribunal:

‘28.4.25 The Claimant must send to the Respondent a document setting out how much compensation for lost earnings or other losses they are claiming and how the amount has been calculated.

12.5.25 The Claimant and the Respondent must send each other copies of all documents that they have relevant to the claim.

26.5.25 The Claimant and the Respondent must agree which documents are going to be used at the hearing. The Respondent must prepare a file of those documents and send a hard copy to the Claimant.

9.6.25 The Claimant and the Respondent must send each other copies of all their witness statements.’

4. The Final Hearing was listed for 26th November 2025 and 27th November 2025. On 24th October 2025 (1 month before the final hearing) the Respondent applied to the Employment Tribunal for an order striking out the Claimant’s claim on the grounds of his non-compliance with the Tribunal’s directions. It did so despite its own failure to comply with the same directions order. It had not provided its documents or its witness statements, both of which it could have undertaken.

5. Following that application EJ Kilmov issued an Unless Order that Unless:

(i) *‘by 5th of November 2025, the Claimant sends to the Respondent a document setting out how much compensation for lost earnings or other losses he is claiming and how much has been calculated.*

(ii) *by 7th of November 2025, the Claimant sends to the Respondent copies of all documents that he has relevant to the claim.*

(iii) *by 14th of November 2025, the Claimant exchanges with the Respondent his and all his witness statements;*

the claim will stand dismissed without further order.’

6. The Order stated that the case would be automatically struck out in the event of non-compliance.

7. On 5th November 2025 (the first date for compliance in the Unless Order) the Claimant presented a revised ET1 Claim Form and Particulars of Claim. That document purported to add a number of new claims. The Unless Order required that by 5th November 2025 the Claimant send to the Respondent a document setting out how much compensation for lost earnings or other losses he is claiming and how much has been calculated.
8. The new ET1 at box 9.2 set out the remedy sought by the Claimant:

Remedy Sought:

I seek compensation for financial loss and injury to feelings resulting from my dismissal and the discriminatory treatment I experienced.

I am claiming loss of earnings from 11 October 2024 to the present (13 months), which includes:

11 months of full earnings loss at approximately £2,669/month (£29,359 total);

3 months of partial loss due to a significantly lower-paid role held from May to July 2025 (£2,007 shortfall);

Future loss of earnings, projected at 2 months (£5,338) due to continued unemployment despite ongoing job-seeking efforts;

Loss of employer pension contributions, estimated at £2,500 based on average monthly contributions;

Compensation for injury to feelings under the Equality Act 2010 (middle Vento band), for sustained distress and the mental health impact caused by prolonged mistreatment and lack of employer support: £17,500.

In addition, I reserve the right to seek an ACAS uplift of up to 25% on the compensatory award, given the employer's failure to follow fair grievance and disciplinary procedures.

This brings the total remedy sought to approximately £56,704, or £64,545 if the Tribunal awards a full ACAS uplift. I reserve the right to revise these figures as further evidence becomes available or as directed by the Tribunal.

9. The attached Particulars of Claim also contained a damages section, which stated at paragraph 101:

'Damages.'

Further to the above, I submit that the Respondent is liable in damages for the following losses:

*1 basic award for unfair dismissal £5,600.00.
2. compensation award for unfair dismissal, to be determined.
3. pay in lieu of notice (PILON) £5,792.30.
4. unauthorised reduction from holiday pay £377.52.
5. Unauthorised deductions from pay £724.03.
6. Failure to provide written statements of dismissal £1,448.06.
7. Failure to provide written terms and conditions of employment £2,896.00.'*

10. In my judgment the combination of box 9.2 of the ET1 Claim Form dated 5th November 2025 and paragraph 55 of Particulars of Claim dated 5th November 2025 complies with part (i) of the Unless Order and as such the Claimant has complied with that part.
11. The parties both agree that the Claimant has not provided his documents for the final hearing, or his witness statement. Whilst the Respondent was not subject to the Unless Order, I do note its failure to comply with the original Tribunal direction to provide its documents and witness statements at the same time that the Claimant was ordered to do so. I consider that it is possibly disingenuous to seek a strike out of a claim for non-compliance of Tribunal directions that the party seeking the strike out has also not complied with.
12. In any event, Employment Judge Klimov, in his order setting out the issues for today on 5th November 2025, revoked parts (ii) and (iii) of his prior Unless Order, that is the requirement on the Claimant to provide his documents by 7th November 2025 and his witness statement by 14th November 2025. His Order stated:

'In light of this decision, I revoke the remaining conditions: (ii) 'by the 7th November 2025, the Claimant sends to the Respondent copies of all documents he is relevant to the claim', and (iii) 'by 14th of November 2025 exchanges his and all his witness statements with the Respondent' and suspend all other case management orders pending their preliminary hearing on 26th of November 2025.'

13. Thus, at the point I am tasked with determining whether the Claimant has complied with points (ii) and (iii) of the Unless Order, those requirements had been revoked. There can be no failure to comply with points (ii) and (iii) if the order to comply with them has been revoked.
14. In the circumstances it is my judgment that the Claimant has complied with the obligations of the Unless Order that remain live. The combination of section 9.2 of the ET1 Claim Form dated 5th November 2025 and paragraph 55 of the Particulars of Claim of the same date comply with the terms of point (i) in the Unless Order dated 31st October 2025.

Issue 2: if the Claimant has failed to comply with the Unless Order whether the dismissal of the Claim should be set aside?

15. This matter falls away as I have found that the Claimant complied with the terms of the Unless Order that have remained live.

Issue 3: Whether the Claimant can amend his claim to include the complaints of race discrimination, disability discrimination and for a redundancy payment?

16. On discussion with the Claimant, he clarified that he did not wish to pursue an application to amend his claim to include claims of race discrimination or for a redundancy payment. I explained that he would not be able to reintroduce them later, and the Claimant confirmed he understood that point.
17. As such the remaining and only amendment application related to the addition of a disability discrimination claim. Disability discrimination was not ticked in box 8.1 of the original ET1 Claim Form. It was ticked in box 8.1 of the amended Claim Form presented on 5th November 2025.

18. The relevant law when dealing with applications to amend a Claim Form is as follows (**Selkent Bus Co Ltd v Moore** [1996] IRLR 661). The Tribunal must take account of all the circumstances, with the paramount consideration being the balance of the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Factors to consider include:

18.1. the nature of the amendment application itself, i.e. whether it is minor or substantial;

18.2. the relevant time limits and, if the new claim is out of time, to consider whether the time should be extended under the appropriate statutory provision. The lack of a good reason for a delay is not necessarily fatal to an application to amend. A Tribunal could fall into error if it concentrated entirely on the reason for delay at the expense of other factors, particularly that of prejudice: refer to **Pathan v South London Islamic Centre** [2013] UKEAT/0312/13 and **Szmidt v AC Produce Imports Ltd** [2014] UKEAT/0291/14.

18.3. The timing and manner of the application;

18.4. Different types of discrimination are different claims and amendments to plead new discrimination claims are likely to be refused on the grounds that they seek to introduce entirely new claims (**Ali v Office of National Statistics** [2005] IRLR 201 and **Harvey v Port of Tilbury (London) Ltd** [1999] IRLR 693, EAT);

18.5. A cause of action is a set of facts that give rise to a legal remedy. The focus needs to be upon the facts that are alleged. If an amendment is in effect no more than or little more than applying a different legal label to the same set of facts, it is not a fresh cause of action; it is identifying rather a different way of looking at precisely the same facts for the convenience of the court and to enable justice to be done (**Redhead v London Borough of Hounslow** [2011] UKEAT/0409/11);

18.6. What is required is a focus on the substance of the amendment and the extent to which it gives rise to, on the one hand, minor or technical amendments at the low end of the spectrum, or a wholly new allegation raising altogether new matters not previously raised at the other end of

the spectrum (**Abercrombie & Ors v AGA Rangemaster Ltd** [2013] ICR 213, CA).

- 18.7. In **Chaudhry v Cerberus Security Monitoring Services Ltd** [2022] EAT 172, HHJ Tayler emphasised the need to identify the amendment or amendment sought and thereafter the need to balance the injustice and/or hardship of allowing or refusing the amendment or amendments, taking into account all of the relevant factors, including, where appropriate, those referred to in **Selkent**.
- 18.8. In **Selkent** the factors generally relevant to the exercise of discretion include (i) the nature of the amendment, (ii) the applicability of time limits and (iii) the timing and manner of the application. However, these factors are not a checklist to be ticked off. The keywords are '*the balance of injustice and or the hardship of allowing or refusing the amendment*'.
19. The Claimant accepted that his original Claim Form did not identify a disability discrimination claim. However he asserts that the factual basis for his disability claims are referred to in the original Claim Form. He relied on the following paragraphs:

Paras 10-12: *'I was invited to and subsequently attended a disciplinary hearing in January of 2024. I've been accused of excessive idling, time keeping issues and using my vehicle for personal use. Excessive idling was in relation to the fact that I kept the engine of the vehicle the Respondent had assigned me running.'*

Paras 17-21: *'Personal use of the vehicle. This was on occasions that I happened to pass my home on the way to the job, during which time I used my bathroom facilities at home. It was no more than personal use then when I drove to work in the morning. Moreover, the Respondent was still well aware I was and still am suffering from a bowel condition. Consequently, and in that regard, I need to use the lavatory more than the average employee. Despite this, I was provided with a final written warning by the Respondents in March 2024. I appealed this decision but it was upheld. I'm suffering from bowel issues which the company is aware of. In March 2024 I was given a final warning. I appealed the decision, but ultimately the Respondent's decision was upheld.'*

Para 30: Subsequently I was told that I had been dismissed on 14th of October 2024 verbally and in writing via e-mail.'

Para 42.1.1: The Respondent was well aware that none of the incidents raised in January 2024 warranted a final written warning and this should not have been on my file in the first place.'

Para 42.1.4 Secondly, for the issue with using my bathroom facilities at home, again, it had no reasonable belief that I, more than any other staff member was misusing my vehicle for personal use.

Para 42.1.6 Finally, regarding my times of arriving and leaving work, it was simply aware of and had no reason for singling me out for these times as there were average times for all staff arrived and left.

Para 42.1.7 This had never been raised as an issue prior to January 2024. It never made it clear why it was making an issue of it now.'

Para 42.2.3 As for the reasons for the original full written warning, it was equally aware that this was baseless.

Para 42.2.4 The logs would have shown my route took me past my house.

Para 42.2.6 It simply had no basis to assert that my time keeping was any worse than anybody else's.

Para 42.2.7 Finally, and in addition, or in the alternative, the process of dismissal was not fair in all the circumstances.'

20. The Respondent submits that the Claimant's disability claim is a wholly new claim based on wholly new facts. I reject that submission. The factual basis for the disability claim is plainly set out in the 1st Claim Form. This is a classic example of attaching a new legal label to an existing factual claim. Turning to the question of prejudice and hardship, there is some element of prejudice and hardship on the Claimant if the amendment were refused. He would be denied the opportunity to assert that he was the victim of disability discrimination and denied access to an injury to feelings award. The Respondent referred to prejudice in the most general of terms, namely needing to seek documents or speak to witnesses etc. When I asked the Respondent to give me an example of actual prejudice (for example a witness to a feature of the disability claim that is no longer available) the Respondent was unable to identify any. Given the factual issues stated in the 1st Claim Form I cannot identify (and nor has the Respondent) any difficulty in obtaining instructions now, that it would not have had to do in any event.

21. In all of the circumstances the Claimant's amendment to add a disability discrimination claim is granted.
22. Turning to the correct label, the Claimant said that the Respondent had a practice of disciplining engineers that spent too long idling or taking too long starting or too long breaks. He asserted that this placed him at a disadvantage because of his bowel condition and the need for more frequent toilet breaks and he argued that the Respondent should have made an adjustment to its practice to remove that disadvantage. This raises a claim of a failure to make reasonable adjustments and accordingly that legal label (s20-21 EqA) will be added to the Claim.
23. In addition, I think the only fair reading of the Claimant's original Particulars of Claim is that his dismissal arose, in part at least, because of his final written warning, which was something that arose out of his disability. The Respondent, in its original Grounds of Resistance pleads that the Claimant's final written warning was a factor in the decision to dismiss him. Indeed, it asserts that the H&S report failings would have resulted in a first written warning, which was escalated to dismissal when the time-keeping warning was taken into account. It states:

Para 13: 'When deciding whether to dismiss Mr Renney took into account a live final written warning on the Claimant's personnel file which had been issued on 8th of March 2024. The previous offences were breaches of fleet policy, failing to follow process, poor time keeping and a final written warning was live for a period of 12 months, expiring on 7th of March 2025. The Claimant had appealed the sanction at the time. The appeal was heard and the Respondent's decision on appeal was to uphold the final written warning'.

Para 16: 'As to the appropriate sanction to be applied overall, Adam Renney explained his decision: 'After carefully considering the points you raised during the hearing and the evidence made available to me during the disciplinary process and investigation, I've decided to issue a first written warning. As you already have a sanction in the form of a final written warning for breach of fleet policy failing to follow process, time

keeping and conduct, which was issued on 8th of March 2024, and therefore is considered live for a period of 12 months, the addition of this additional written warning results in your dismissal from your employment with Hyperoptic.'

24. It is clear that the Respondent is aware of, and placed reliance, on the time-keeping failure, which, the Claimant asserts was something that arose out of disability. In the circumstances, a s15 Equality Act claim shall be added to the legal labels.

Issue 4: Any further strike out or deposit order sought by the Respondent

25. No further application was pursued by the Respondent for a strike out Order or an Order for a Deposit. In the circumstances this issue fell away.

Issue 5: Case Management

26. We now turn to case management. The Claims in the case are:
 - 26.1. unfair dismissal;
 - 26.2. discrimination for something arising out of disability;
 - 26.3. failure to make reasonable adjustments;
 - 26.4. failure to provide written terms & conditions;
 - 26.5. wrongful dismissal; and,
 - 26.6. unlawful deductions from wages;
 - 26.7. failure to provide reasons for dismissal.
27. Given the time left during the hearing, I propose to extract the issues from the Claimant's 1st Claim Form, to include the two disability claims which have formed part of my Judgment on the amendment application and to set them out in a List of Issues to be attached at Annex 2 to my Case Management Order. I also proposed to send out case management directions setting out the steps to be taken by both sides. Both sides agreed with these proposals.

28. As we did not have time to discuss and agree the directions during the hearing, I proposed to send out directions in accordance with the standard national case management template and the overriding objective. I confirmed that within those directions I would give the Respondent permission to amend its Grounds of Resistance in light of the added disability claims. I confirmed that if either party considered that the List of Issues recorded in the Case Management Agenda did not reflect the original particulars of claims and the disability discrimination claims, or if they wish to propose alternative directions, they were at liberty to apply to do so at any time.

Employment Judge Jonathan Gidney

Order approved on 28th November 2025

Written Reasons approved on 29th December 2025

Sent to the parties on:

31 December 2025

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For the Tribunal Office:

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