EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr M Kecsmar	**v**	Fresh Direct Limited

Heard at: Cambridge **On:** 8 – 12 December 2025

Before: Employment Judge A Clarke KC

Members: Ms S W Smith and Ms L Davies

Appearances

For the Claimant: In person

For the Respondent: Ms L Kaye, Counsel

Interpreter: Mr Tomas Mezei, Hungarian speaking
Ms Vanda Priestley, Hungarian speaking

JUDGMENT

1. The Claimant was fairly dismissed, hence the claim for unfair dismissal fails.

2. The Claimant was not wrongfully dismissed and the claim for notice monies fails.

3. The claim for direct disability discrimination fails and is dismissed.

4. The claim for discrimination arising from disability fails and is dismissed.

5. The claim for the failure to make reasonable adjustments fails and is dismissed.

6. The claim for harassment related to the protected characteristic of disability fails and is dismissed.

7. The claim for direct religious discrimination fails and is dismissed.

8. The claim for detriments consequent upon the Claimant taking time off for parental leave in accordance with the Maternity and Parental Leave Regulations 1999, fails and is dismissed.

REASONS

Introduction

1. The Claimant brought his claim in April 2023. The issues were eventually clarified in two Preliminary Hearings on 13 June 2024 before Employment Judge King and 17 September 2024 before Employment Judge Tynan.

2. We have before us a Bundle of documents of some 400 pages, some of which were added part way through the Hearing. Those documents include transcripts of covert recordings made by the Claimant of various of the conversations and meetings important in this case and we will say more about that in due course.

3. The Claimant is Hungarian and that is his first language. However, the covert recordings and his evidence before us show that he has a good grasp of English; that said he has had the help of an Interpreter at this Hearing.

4. We heard in evidence from the Claimant on his own behalf and from the Mr Earl, Mr Maguire and Mr Dellar on behalf of the Respondent. We set out below some brief observations as to these Witnesses:

    4.1. The Claimant appeared to us to struggle when seeking to answer difficult questions and his answers were sometimes at variance with the contemporaneous documents and in contradiction one of another. There were also very lengthy pauses while he struggled to assemble his answer to any particular question. We note two particular themes in his evidence, cross examination and submissions. The first relates to the absence of holiday request forms, of which we shall say more in due course. We note that although this was a major theme in his evidence, cross examination and submissions, it is not referred to at all in his Witness Statement, nor does it feature in the transcripts of the relevant contemporaneous meetings. Secondly, we were struck by the Claimant's continued assertion of a right to take time off for childcare whenever he thought this appropriate, coupled with a refusal to recognise the possible impact of this on his colleagues and upon the business.

    4.2. Mr Earl, a Warehouse Shift Manager, we considered to be clear in his answers and equally clear when he could not recall what might have happened some two or three years ago. Even when contemporaneous documents showed what he said or did, he very properly maintained that he had no particular recollection of the events in question.

    4.3. Mr Maguire was the Operations Manager at the Warehouse in question. He appeared to us a straight forward evidence giver,

helpful and someone who worked his way up from the shop floor and expressed obvious sympathy for the Claimant. This was evident to us in the way he answered the Claimant's questions.

4.4. Mr Dellar is a Warehouse Operative currently acting as a Team Leader. His evidence covered one particular incident and its repercussions but his evidence appeared to us credible, indeed we were struck that when challenged as to his recollection of a particular conversation, he was able to paint a credible picture of the circumstances in which that conversation had taken place.

Findings of Fact

5. The Claimant was employed by the Respondent from 14 August 2016 until his summary dismissal on 11 January 2023. He was at all times a Warehouse Operative doing various tasks in relation to the packing and distribution of fresh foods.

6. For a period of some eight weeks from 12 August 2020, the Claimant was absent from work due to knee or knee and foot pain. He submitted fortnightly Fit Notes, none of which contained any reference to Arthritis or Osteoarthritis and on none of which did his GP complete the section of the form designed to allow a need for reasonable adjustments to his work to be indicated. However, a return to work meeting in October 2020 records the Claimant as saying that he suffered from Osteoarthritis.

7. In October 2020, the Claimant had a consultation with the Respondent's Occupational Health providers. They recommended a period of six weeks of light duties on his return to work and that he should walk for some two hours a day. The Claimant was given light duties for those six weeks with reduced hours. A role was created for him which involved dealing with papers and keys from Delivery Drivers. This role was necessary due to the regimes in place at the time to deal with Covid.

8. The Claimant then returned to normal warehouse duties but the business was quiet due to the impact of Covid. There followed several weeks for which the Claimant was either furloughed or was working reduced hours.

9. By the end of May 2021, the Claimant had returned to full time work, at his own request. He was allocated replenishment work and sometimes box room work. Replenishment work was the second lightest work in the warehouse, box room work being the lightest. Usually, box room work was undertaken by one severely disabled employee and by an employee with serious asthma, persons who the Respondent could not reasonably move to make way for the Claimant, whom in fairness never suggested that this should happen. Occasionally when on replenishment work the Claimant would be doing the work alone as the other person allocated to it was absent for a toilet break, or to get a fresh pallet of materials. That was normal and the Claimant did not complain of this. The Claimant says that he was experiencing knee pain from June or July 2021 but he did not seek

any adjustments to his work from Managers, or the on site HR Officer at this time.

10. In September 2021, the Claimant booked a day's holiday on 13 September, and this was approved. On 12 September 2021, he realised that he had booked the wrong day, he needed to be absent on 15 September. He tried to change this, however, Mr Earl refused the change. He explained to the Claimant that he had arranged cover for the next day and could not cover for his absence on the 15th on such late notice.

11. The Claimant had a further period of sickness absence from late August 2021 and was referred to the Respondent's Occupational Health provider again. He consulted with that provider on 11 October 2021 and a Report was produced. It noted that he had had it explained to him that he had Osteoarthritis. Occupational Health said that the Claimant was fit for light work and recommended a phased return to work. The Claimant was referred to a gym to improve his fitness. His GP signed him off until 5 December 2021.

12. The Occupational Health Report was sent to an HR Officer who was at that time off work as his wife, a nurse, had died of Covid. He never returned to work but whether or not that Occupational Health Report, or its contents, was distributed or made known to the Respondent's Managers is unclear and a matter that we cannot resolve on the evidence before us.

13. On his return on 6 December 2021, the Claimant had a Return to Work meeting. The Respondent's records show that such a meeting took place and set out briefly what the Claimant is said to have told his Manager regarding his diagnosis and the advice given to him. The Claimant initially appeared to contend that no such meeting took place and that the record was taken from material on his Fit Notes; in fact none of that information is on the Fit Notes. Later the Claimant suggested that the meeting had taken place with a more junior Manager than Mr Earl, a Mr Kallis, and that his complaint was not that there was no Return to Work meeting but that the Return to Work meeting ought to have been with Mr Earl and was not. We reject the Claimant's assertion that at about this time Mr Maguire accused the Claimant of not wanting to work.

14. The Claimant did discuss his absence record at this time with Mr Maguire. Mr Maguire was concerned that the Claimant's absence pattern suggested a possible misuse of the system. He pointed out that the Claimant stayed on sick leave until his sick pay entitlement was exhausted and then returned to work. Mr Maguire sought to establish the reason why the Claimant chose to return to work when he did, pointing out that the Claimant appeared to be saying that his condition had not changed such that he was fit to return to work rather earlier than his return to work in December. We note that the Occupational Health Report supports this view, but it is possible that Mr Maguire had not seen it, certainly he does not recall that. When Mr Maguire explained his concerns arising from the Claimant's answers to his questions, the Claimant accepted that this could

give rise to concern. Mr Maguire concluded the meeting by saying that he would monitor the situation. He did not threaten the Claimant, rather he raised his concerns with the Claimant, explained them and explained his provisional conclusion. At the material time the Claimant does not appear to have been concerned by this, indeed in his evidence he appeared to suggest that his concern about this and various other matters arose not because of the contemporaneous events, but because of what happened immediately prior to his dismissal and the dismissal itself.

15. On his return, the Claimant was again given light duties in relation to replenishment and box room work, initially on half days, but returning to full-time work at his own suggestion. He was happy with that work but later asked to be moved to bulk work to enable him better to build up the strength in his knees. The Respondent was concerned as to the suitability of this work but allowed the Claimant to try it. The move was a success in the sense that from December 2021 onwards the Claimant had no absences due to anything other than holidays, viral illness and childcare issues. Further, the Claimant's medical records show that he did not consult his Doctor about his knees or ankles between November 2021 and 15 January 2024, which was (of course) some time after his dismissal.

16. We will deal with the Claimant's request for training at this point. The Claimant had sought training as a Fork Lift Truck Driver in 2016, but failed the course. He was interested in other training. Training opportunities were listed by the Respondent's Health and Safety personnel on a wall. In 2022, two courses were available as the Respondent had a need for further Fire Marshalls and First Aiders. The Claimant did not apply for either, as he could have done. There were no Health and Safety Management courses being conducted that year. The Claimant had one or two general discussions with Mr Earl in 2022 about his desire for further training to improve himself but there were no other courses available and Mr Earl took the matter no further. We find that he did not take it further as he was extremely busy. We also note that in the circumstances it is unclear to us what Mr Earl could have done other than ask other Managers to keep the Claimant in mind should opportunities for training arise.

17. In November 2022, the Claimant learnt that his son's Nursery would close for Christmas from 25 – 29 December. The Claimant then asked to take those days as annual leave. This was refused as others had already been granted leave for that period and the Claimant had taken leave at that time in previous years. The Respondent deals with holiday requests largely on a first come first served basis but also has regard to an employee's history of holidays at peak times. Mr Earl informed all who had sought such leave as to the outcome of their applications by speaking to them. He says that he handed back their leave forms which would have contained a reason for refusal. The Claimant denies that his leave form was returned to him. He was certainly told well in advance of 19 December of the fact that he had not been allowed the time off.

18. Although he had been refused leave in November, the Claimant spoke to Mr Earl again nearer the time to repeat the request, but this was again refused.

19. On 21 December 2022, the Claimant was absent due to childcare issues and his Manager Mr Earl spoke to him and enquired whether he intended to work on 26 and 27 December 2022. Mr Earl was told that the Claimant could not work on those dates as he had to care for his son, due to the closure of the Nursery and his wife being at work. Mr Earl reminded him that his leave request had been refused and therefore he should attend for work. The Respondent has a Policy which allows for emergency absences to care for dependents but Mr Earl reminded the Claimant that this could not apply as the Claimant had known of the need to find childcare since November. The Claimant said that he had to care for the child because his wife was at work. Mr Earl did not threaten the Claimant by saying something along the lines of,

> "If you go on childcare I will deal with you"

but he did make clear that the Claimant's circumstances did not allow the operation of the Emergency Absence Policy and he expected him to be at work.

20. On the evening of 25 December 2022 the Claimant telephoned the Respondent's Absence Reporting Line to say that he would be absent the next day as he had to take care of his son. He was indeed absent on 26 and 27 December and at his Return to Work meeting on 28 December he said that his absence was because he had to take care of his son as the Nursery was closed and his wife was at work. He signed the Return to Work Report which clearly set out what he had said and warned of the serious disciplinary consequences should he have provided false information.

21. On 26 December 2022 at about 9:15am, having learned that the Claimant was not at work, Mr Earl spoke to Mr Dellar and was told that the Claimant had told him that he did not intend to attend for work on either the 26 or 27 December as he was religious and should not be required to work on those days. Mr Earl approached Mr Dellar because Mr Dellar regularly gave the Claimant a lift to work.

22. The Claimant subsequently covertly recorded a conversation between himself and Mr Dellar as the latter drove him home after the Disciplinary Hearing we deal with below. The Claimant sought to persuade Mr Dellar to change his account of what had been said to him, but Mr Dellar told the Claimant that he had done no more than tell Mr Earl what the Claimant had said to him when asked about the Claimant's absence. That conversation in the car contains two references by the Claimant to his having taken time off because it was his wife's birthday. The Claimant asserted in cross examination that it was not his wife's birthday on either of those days but could not explain his statements. This, of course, was

not a conversation known to the Respondent when taking the decision to dismiss.

23. Suspicious that what the Claimant said about having to care for his son because his wife was working might not be true, Mr Earl checked and found that the family business in which she worked, a nail bar, was closed on 26 December 2022. It was found to be locked up with the lights off at about 1pm and no one answered the telephone when it was rung several times during that day by Managers. Photographs were taken by a Manager (not Mr Maguire) who attended at the nail bar to show that it was indeed closed.

24. Mr Earl was suspicious that the Claimant had always intended to take these days off, whether given leave or not and that the reason that he was now putting forward for taking them off was false. He considered the evidence suggesting that the nail bar where the Claimant's wife worked was closed and the fact the Claimant had known of the Nursery closure since at least November and what the Claimant had said to Mr Dellar, in reaching that view. He then interviewed the Claimant at the Return to Work meeting on 28 December 2022 referred to above, showed him the photographs of the closed nail bar and told him of the calls made to the nail bar which were unanswered. The Claimant said that his wife was working alone and may have locked the door if she was upstairs and that she would not answer the telephone if working alone. He also said that she might have gone out for a coffee or lunch and that she had finished work between 3 and 4pm.

25. We note that the focus of the Claimant's explanation at that Return to Work meeting with Mr Earl was the closure of the Nursery and his wife's working, rather than the explanation enlarged upon at the end of his Disciplinary Hearing and in his Witness Statement. This was that their son had been ill on 25 of December which had led to the call to the Respondent on the evening of 25 December that his son had recovered and that the two of them had gone to the nail bar around about 2pm, nor did he mention (as he later did) that he had talked with his wife at the nail bar from 2 – 4pm as she waited for her last customer who had failed to turn up.

26. Mr Earl decided that the matter should be considered under the Respondent's Disciplinary Code and wrote a detailed Report to that effect setting out among other things what had been told to him at the Return to Work meeting.

27. By a letter of 9 January 2023, the Claimant was invited to a Disciplinary Hearing. It was alleged that he had seriously breached trust and confidence in the way that he had behaved. He was sent Mr Earl's detailed Report which set out the allegations against him in detail, the documents which had accompanied it and a copy of the Respondent's Disciplinary Code. He was offered the chance to be accompanied at the Hearing and warned that the matter was regarded as potentially so serious that his job was at risk.

28. The Disciplinary Hearing was conducted by Mr Maguire, accompanied by an HR Officer. That lady made detailed notes which she went through with the Claimant to obtain his approval or correction, before asking him to sign them as he ultimately did. Those notes paint an accurate picture of the meeting. We can be sure of this because the Claimant secretly recorded the whole meeting and, long after disclosure should have taken place, he produced a transcript. The Respondent has taken the pragmatic course of allowing the material to be relied on in evidence, whilst noting its concern as to the Claimant's underhand conduct. The Claimant had also covertly recorded the 28 December 2022 Return to Work meeting but he did not dispute Mr Earl's account of what he had said at that meeting during the Disciplinary Hearing, either by reference to his recording, which of course at that stage was concealed, or otherwise.

29. From the transcript of the Disciplinary Hearing it is clear that Mr Maguire gave the Claimant every opportunity to explain what had happened on 26 December 2022. To begin with the Claimant repeated that he had had to care for his son as the Nursery was closed and his wife had to get to work because she was very busy. He was pressed on whether his wife was actually at work and whether she had tried to take the day off. The Claimant maintained that she was at work and she had to be there as she had customers and was busy. He said that he did not know if she had asked for time off, but he knew she was busy for that whole week. Later, the Claimant said that the nail bar was a family business and that his wife could leave work if she wanted to. He could not explain how, if she was busy with clients, the shop was shut.

30. Mr Maguire put to the Claimant that the evidence before him suggested that the shop was shut that day, that he and his wife were both at home and that he had always intended to take the days off, even though he had been refused leave. He asked the Claimant to respond. The Claimant reiterated his previous position. There was then a discussion about whether the Claimant had always intended to claim a need to care for his son so as to justify his time off. It was pointed out by Mr Maguire that the Respondent's Policy allowing emergency time off for childcare applied to emergencies only and not to a Nursery closure which the Claimant had known about for some two months.

31. The Claimant then revised his story and alleged that his son had been ill with a fever on 26 December 2022, so this was indeed an emergency. The Claimant could not explain why he had not said this earlier in the Disciplinary Hearing. There was then further consideration of why his wife had not taken care of the child. During the course of that, the Claimant said that he had met his wife at the nail bar at 2pm. He then said that he had stayed with his wife at the nail bar talking until 4pm because she was waiting for a customer who apparently should have been there at 2pm. The Claimant did not further mention his son or his fever during that part of the meeting. In his Witness Statement the Claimant alleged that his son had had a fortunate recovery from his fever during the morning and had wanted to go with him to the nail bar and did so.

32. Mr Maguire simply did not believe the Claimant. In all the circumstances he remained of the view which he had provisionally set out to the Claimant in the Hearing in order to invite his comments: he was satisfied that the Claimant had always intended to take off 26 and 27 December 2022. On learning in November that his holiday request was refused, he had decided to claim the time off on the basis of the emergency dependent leave Policy. When he realised that this would not be applicable as this was a predictable lack of childcare, which the Policy expressly says would not trigger its operation, he invented the story that his son had a fever. Something for which he had operated the Policy successfully earlier in the month when his son really was ill with conjunctivitis. Mr Maguire set out his reasoning for so finding to the Claimant orally and repeated it in a letter of 18 January 2023. He considered that the Claimant had been persistently dishonest and that this had destroyed the necessary trust and confidence between employer and employee.

33. Having reached that conclusion, Mr Maguire then carefully considered what would be the appropriate penalty and decided that dismissal was appropriate. His reasoning is set out in some detail in his letter and it reads as follows:

> "Having found the allegations to be proven I had to consider the appropriate sanction to impose. While I noted your length of service, which to my mind should always be considered a mitigating factor, there was little more by way of mitigation. You seemed to accept no responsibility for your actions and have demonstrated no remorse whatsoever, notwithstanding the impact of your absence on your colleagues and the operation. You offered me no direct assurances and your conduct here and during the process gave me no comfort as to your future conduct. I had no confidence that were I to give a lesser sanction that this would result in an improvement in your adherence to company rules. You instead persisted with what was a clearly dishonest and changing version of events by way of trying to excuse your conduct."

34. As there is a claim for wrongful dismissal, we need to reach our own conclusions as to the Claimant's alleged gross misconduct. We are satisfied that the Claimant acted in the ways relied upon by Mr Maguire and for substantially the same reasons. We also have relied upon the Claimant's inability to explain why he did not set out the true position, as he now alleges it to be, from the start of his Return to Work interview and from the start of the Disciplinary Hearing, but chose instead to focus upon the closure of the Nursery and his wife's need to work.

35. We note that her employer wrote a statement which accompanied the Claimant's Appeal letter. That said that she came in to do cleaning and other work and that the nail bar was shut. That, of course, runs contrary to the Claimant's case that she had customers that day and waited for her last one from 2 – 4pm. We find the latter assertion incredible. This is especially so given their son's alleged recent recovery from a fever.

Indeed, we think the whole story of the attendance of the Claimant's wife and then the Claimant at the nail bar incredible, especially given the GP's note of the attendance for the diagnosis for conjunctivitis. That note clearly states that the Claimant's wife had confirmed that she understood the instruction that if their son had a fever shortly after the treatment for conjunctivitis, they should urgently seek medical attention. The notes show that no such attention was sought in relation to the alleged fever on the evening of 25 December 2022. In short, we consider that the Claimant, his wife and their son, were more probably than not at home on 26 and 27 December 2022.

36. The Claimant wrote to Appeal against his dismissal, albeit that the letter stated that he did not want to return to work. He was notified of an Appeal Hearing but chose not to attend it. His assertion in his Witness Statement that he received a letter of 26 January 2023 refusing him an Appeal is wrong. There was no such letter, as he appeared to accept in cross examination.

37. The Respondent relies upon an actual comparator in relation to direct discrimination claims. The person will be referred to by us as Mr X. He had seven children and a wife with significant health difficulties. He periodically had to take time off as a matter of urgency to care for his dependents. There is no suggestion other than that he operated the Emergency Absence Policy in circumstances of real emergency. The Claimant pointed in general and unspecific terms to the number of times that Mr X did this. We found that evidence unhelpful. The number of times that the comparator legitimately used the Emergency Absence Policy appears to us to be of no relevance.

The Law and Submissions

38. The Claimant's submissions which responded to those of the Respondent represented a rehearsal of the evidence, therefore we have dealt with those in making our findings of fact.

39. The Respondent's submissions briefly summarised the relevant Law and applied their suggested findings of fact to it. The Law is uncontroversial and like those of the Claimant, the Respondent's contentions as to matters of fact are dealt with in our findings where necessary.

40. Insofar as unfair dismissal is concerned, there is a burden on an employer to show the reason for dismissal and that the reason is one of the statutorily permissible reasons found in the Employment Rights Act 1996. Conduct is one of those reasons.

41. Once the reason is established and found to be one of the statutorily permissible reasons, a Tribunal must then go on to consider whether the dismissal was fair in all the circumstances in accordance with Section 98(4) of the 1996 Act. We have in mind the guidance given by the Court of Appeal when dealing with cases of conduct dismissals, to be found (for example) in the well known Burchell case. It is necessary for us to

consider whether the Respondent believed that the Claimant had committed the misconduct relied upon, whether it had reasonable grounds for that belief and whether it had conducted a reasonable investigation in order to establish those grounds.

42. Having considered those matters it is then necessary for us to go on to look at whether dismissal was an appropriate penalty. It is not for us to substitute our own view in that respect, rather we have to ask ourselves whether dismissal falls within the band of responses available to a reasonable employer in respect of the facts as found.

43. We turn next to the Law on wrongful dismissal. In order for an employee lawfully to be summarily dismissed, it is necessary for that employee to be found to have been in repudiatory breach of his or her contract of employment. Committing acts of gross misconduct amounts to repudiatory breach. Here it is for us to determine whether, having considered the evidence objectively, there was gross misconduct in the particular case.

44. We turn next to the Law in relation to discrimination and we begin with the Law in relation to direct discrimination. Here the protected characteristics relied upon are firstly disability and secondly religion. The structure of the relevant section (s.13) of the Equality Act 2010 is as follows: having determined, if necessary, whether the Claimant is a disabled person or someone having a relevant religious belief, we would then need to turn to see whether the Respondent has subjected the Claimant to the treatment relied upon in this context. Having established that as a matter of fact, it is necessary to go on to consider whether that was less favourable treatment. This is a comparative exercise. We need to consider whether the Respondent treated the Claimant, in the ways found, less favourably than it treated or would have treated others in not materially different circumstances. A Claimant may either name a particular comparator or rely upon a hypothetical comparator whose characteristics are materially the same as his or her characteristics, save for the protected characteristic.

45. We turn next to s.15 of the 2010 Act which deals with discrimination arising from disability. Here it is necessary to identify things which arose in consequence of the disability. Having established what those things are, the Tribunal must then turn to see whether the Claimant was treated unfavourably in the ways alleged. Here the exercise is not one of comparison as it is for direct discrimination, we simply have to ask whether the treatment took place and if so, whether it was unfavourable. Insofar as the unfavourable treatment is found to have been established, then we have to ask ourselves whether that treatment was meted out to the Claimant because of one or more of those things found to have arisen in consequence of his disability. If all of those matters are found in the Claimant's favour, then we would need to turn to consider the proportionality defence and to consider knowledge (in so far as not already dealt with when considering the causation issue). In the circumstances of

this case, we do not summarise the Law in those regards as we have not had to investigate those matters.

46. We turn next to the failure to make reasonable adjustments under s.20 and s.21 of the Equality Act 2010. Again there is a knowledge requirement, but for the same reason we need not set out the Law in that regard. It is first of all necessary in this context for a Claimant to identify one or more provisions, criteria or practices which were applied generally and in respect of the Claimant. Having established any relevant PCPs that they were applied, we must ask ourselves whether their application put the Claimant at a substantial disadvantage in comparison with persons who were not disabled at the relevant time. If the Claimant satisfies us in those regards, we must then turn to consider the reasonable adjustments themselves. There is no burden of proof placed on a Claimant in this regard but we may note what the Claimant him or herself says about what they think should have been done. Finally, we would have to ask whether it was reasonable for the Respondent to have taken those steps at any relevant time.

47. We next turn to the Law in relation to harassment related to disability (s.26 of the 2010 Act). It is for the Claimant to identify the particular conduct said to amount to harassment. Having identified the conduct and found that it took place we must ask ourselves whether that conduct was unwanted and, if so, whether it related to a protected characteristic; here disability. If those tests are satisfied then we have to ask whether the conduct had the purpose or (taking into account the Claimant's perception and the other circumstances of the case, including whether it is reasonable for the conduct to have that effect) whether the effect was to violate the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

48. Finally, we turn to the Law in relation to parental leave. An employee is entitled not to be subjected to any detriment by his or her employer in respect of availing themselves of the right to take time off, as set out in the Regulations. The 1999 Regulations set out the regime for taking parental leave. There is a notice and counter notice regime set out in Schedule 2. The employee must give, on the facts of this particular case, at least 21 days' notice of his intention to take particular days as parental leave and an employer may then give a counter notice to postpone that parental leave.

49. Issues arise in this case as to whether the discrimination claims were brought in time. If they were brought outside of the primary limitation period, then we would have to consider whether it was reasonably practicable or not to bring the claims in time. Given our findings we have not considered it necessary to look at this area of Law in detail.

50. We were also referred to s.136 of the 2010 Act and its impact on the burden of proof. We have not found it necessary to consider the case in that way, given that we have been able to reach clear findings of fact as to what happened and why it happened.

Applying the Law to the Facts

Unfair Dismissal

51. The Claimant was dismissed by reason of his conduct, causing trust and confidence to break down by his dishonest responses when his taking unauthorised leave on 26 and 27 December 2022 was investigated.

52. We then turn to consider whether the dismissal was fair in all the circumstances. We first consider the conduct of the investigation and disciplinary process. The Claimant makes four criticisms which we deal with individually:

    52.1. He complains that Mr Earl converted the Return to Work meeting on 28 December 2022 into a Disciplinary Investigation, without telling the Claimant. We are satisfied that the investigation was conducted fairly. It was clear to the Claimant that Mr Earl was investigating the circumstances of his absence. Once he had explained his reasons for the absence on 26 and 27 December 2022, Mr Earl then carefully put his concerns to the Claimant and gave him every opportunity to respond to them and in particular, to the evidence as to the nail bar being closed.

    52.2. The Claimant's Application for Leave form was not, he complains, produced at either the Return to Work meeting or the Disciplinary Hearing. The Claimant did not ask for it to be produced on either occasion and there was no dispute that the Claimant had applied for leave and that that application had been refused. At those meetings the question of whether he had been told on or about 19 December or somewhat earlier, was an issue albeit a minor one but this was an issue that the form itself would not have resolved.

    52.3. The Claimant had insufficient time, he says, to prepare for the Disciplinary Hearing. He did not say so at the Hearing itself, on the contrary he said that he was ready to proceed. The transcript shows that he was given every opportunity to set out anything that he wanted to. It was a thorough meeting.

    52.4. Finally, he complains that Mr Maguire was the person who took the photographs of the Claimant's wife's workplace. We find that he was not, but we do not consider that it would have mattered whether he was or was not the photographer.

53. We are satisfied that the Respondent believed the Claimant to have acted in the ways complained of and that the Respondent had reasonable grounds for that belief, formed after a thorough and fair disciplinary process.

54. We consider that the dismissal does fall within the band of reasonable responses. It is clear from the passage from the 18 January 2023 letter set out above, that Mr Maguire carefully weighed the factors that he was taking into account and looked at any mitigation before reaching his decision. We consider that that was the adoption of a fair process and we are satisfied that one course open to him was to summarily dismiss.

Wrongful Dismissal

55. We have set out our findings above. The Claimant had committed acts of sufficiently serious misconduct to warrant summary dismissal, hence he was not wrongfully dismissed.

Disability Discrimination

56. That the Claimant was a disabled person at all material times due to Osteoarthritis in his left knee, is not in dispute. There are issues as to the Respondent's state of knowledge of this disability at various times but as already noted, we have not found it necessary to resolve those issues.

57. The Respondent was certainly aware at all material times that the Claimant from time to time suffered pain in his knee and had been prescribed physiotherapy, swimming and walking exercises. As will appear in more detail below, we consider that the Respondent was sympathetic to the Claimant's difficulties, obtained Occupational Health Reports and provided appropriate adjustments to his working regime. We also note that the Respondent's own records record a Return to Work meeting in October 2020 at which the Claimant referred to Osteoarthritis.

58. The Respondent asserts that several of the claims for disability discrimination were made out of time. Indeed, many complaints do appear to have been presented way outside the primary limitation period and we have grave doubts as to whether it would be just and equitable to extend that period. However, we have chosen to deal with the matter by considering the merits of the various claims and in those circumstances have not found it necessary otherwise to consider whether particular claims were presented in time. In any event, it would not be just and equitable to extend time to permit a claim without merit to be proceeded with.

Direct Disability Discrimination

59. Six incidences of less favourable treatment are relied upon. We consider first whether the factual basis for each allegation is made out and where it is, we go on to consider whether a hypothetical comparator or sometimes Mr X would have been treated differently:

59.1. "In or around July 2022 and again in November 2022 Gary Earl not dealing with the Claimant's requests for attendance on Health and Safety Management courses".

The Claimant did not request attendance at Health and Safety Management courses and indeed there were none for him to attend. His conversations with Mr Earl were much more general and on uncertain dates. The Claimant was reminded that he could apply for the notified First Aid and Fire Marshall courses, but the Claimant wanted what he referred to at one time in evidence, as courses for his improvement. Mr Earl took this no further. There were no such courses available at the time and Mr Earl was very busy so he did not pass on the Claimant's general request to anyone. We are satisfied that anyone else in materially similar circumstances would have been treated the same.

59.2. "On 13 September 2022 Gary Earl denying the Claimant a day's leave for the 15th September 2022."

Mr Earl did deny the day's leave. This was because the request was made very late in the day and the needs of the business meant that the request could not be accommodated. Again, we are satisfied that anyone else in materially similar circumstances would have been treated the same.

59.3. "Mr Earl not dealing with the Claimant's holiday request for leave in December 2022 (between Christmas and New Year) submitted in early November 2022 until he refused it on 19 December 2022. Here the Claimant takes issue with the delay and the refusal itself."

There was no such delay. The Claimant was informed before 19 December 2022. The leave request was indeed refused. Anyone in the Claimant's circumstances would have been so refused. His application was made after others had sought and been granted that time off and he had had those days off for the last three years. We are again of the view that anyone else in materially similar circumstances would have been treated the same. We note that when the request was repeated in December and again refused, the Respondent was aware of the Claimant's difficulty concerning the Nursery. The evidence does not suggest that Mr X would have been treated differently in those circumstances.

59.4. "On 21st December 2022 Gary Earl asked the Claimant about next week and threatened the Claimant by saying, *"If you go on childcare I will deal with you"*."

There was a conversation on 21 December 2022 and the Claimant was warned that his intended absence because of childcare would fall outside the scope of the Emergency Absence Policy and that if he nevertheless did not work on those days, there could be

consequences. We are satisfied that anyone else in materially similar circumstances would have been treated the same.

59.5. "Carrying out an investigation for taking 26 / 27 December 2022 off for childcare reasons including:

(a) Visiting the Claimant's wife's place of work on 26 December to take photographs, and

(b) Obtaining the false statement from Daniel Dellar."

There was an investigation during which the Claimant's wife's place of work was visited and photographs taken and a statement was taken from Mr Dellar. Given the Claimant's behaviour the investigation was one which was justified and would have taken place in respect of any person of materially similar circumstances. The statement from Mr Dellar recorded what he told Mr Earl and was not false in that it recorded a conversation which actually took place.

59.6. "Dismissing the Claimant on 11 January 2023."

The Claimant was dismissed. We are satisfied that anyone else in materially similar circumstances would have been treated the same.

60. In any event, we are satisfied that no aspect of the Respondent's conduct complained of and found to have taken place, was undertaken because of the Claimant's disability or, that protected characteristic more generally.

Discrimination arising from disability

61. It is accepted that the matters relied upon arose in consequence of the Claimant's disability. These were: (a) the need for reasonable adjustments, (b) his sickness absence, and (c) his requests for lighter duties and shorter shifts.

62. As to the nine incidences of alleged unfavourable treatment, we summarise our findings below and also deal with the question of whether the Respondent did any of these things because of the matters which arose in consequence of the Claimant's disability:

62.1. "Failing to deal with the request for easier work (different work or lighter duties)".

The Claimant's requests for lighter work were dealt with. He had phased returns to work and was given the lightest work available, (replenishing or, occasionally, the box room work). His complaint that he was left to do replenishing work alone much of the time is wrong. He was alone occasionally when doing that work, for example when his co-worker took a toilet break. What work could and should be allocated to him was discussed with him at length,

for example at the September 2021 home visit and when he asked to transfer to bulk work and this was permitted. He did not complain about the work given, nor was he absent due to his knee after his return to work in December 2021 and he did not consult his GP about his knee thereafter during the currency of his employment. We are satisfied that there was no unfavourable treatment.

62.2. "Only giving the Claimant a month of half working days in December 2021 and nothing else."

He did have that period of half day working as the Occupational Health Report had recommended. Thereafter, he wanted to go back to full time work and did so successfully. The nature of that work we have already dealt with above and again, there was no unfavourable treatment.

62.3. "Mr Earl not providing the Claimant with a Return to Work briefing in December 2021."

Mr Earl did not conduct the Return to Work meeting, a Team Leader Mr Kallis did so. That was quite usual practice. There was no unfavourable treatment.

62.4. "Failing to deal reasonably with the Claimant's request for lighter duties in or around January 2022."

We refer to subparagraph (62.1) above, the request for lighter duties made initially at the meeting in October 2021 was dealt with reasonably. Again, there was no unfavourable treatment.

62.5. "In or around July 2022 and again in November 2022, Mr Earl not dealing with the Claimant's requests for attendance on Health and Safety Management courses."

We have already dealt with the factual substratum of this complaint and those in the sixth to ninth allegations, which we do not repeat. These do amount to instances of unfavourable treatment but none was related to any of the things said to have arisen in consequence of the Claimant's disability.

We were addressed by the Respondent's Counsel on the issues of knowledge and proportionality but in the light of our findings it is unnecessary for us to deal with those matters.

Failure to make reasonable adjustments

63. Two PCPs are relied upon and we consider each below. Although each is framed in terms of what the Claimant was required to do, we proceed on the basis that it is alleged that these are general PCPs applicable to persons other than the Claimant.

64. The first PCP is,

> "That the Claimant should be required to work standard duties."

There is no such thing as standard duties. The Respondent had various tasks within the Warehouse and the Claimant was required (after discussion and without complaint) to work on the lightest available duties until he requested a move to bulk work.

65. The next PCP relied upon is,

> "That the Claimant be required to work full time shift patterns."

There was no requirement to work full time shift patterns. Where the Claimant requested reduced hours, these were granted. The hours were increased to full time hours at his request.

66. Hence, we do not consider that either PCP is made out.

67. The suggested substantial disadvantage in relation to the PCPs is said to be the Claimant suffering from increased knee pain from June to August 2021. The Claimant certainly had a 60 day absence from August 2021 due to knee pain but prior to that he did not seek any adjustment of his work, either by type or hours, hence even if these PCPs were found to have been applied, either as formulated or as in some way modified to take into account our findings (if that were possible), there is no sufficient evidence that their application led to any substantial disadvantage. Furthermore, even if it did, the Respondent could not have known of this without the Claimant complaining and we are satisfied that he did not complain and that had he done so the Respondent would have done all that it could to assist him. It would not have been reasonable, we should make clear, to put the Claimant full time into the box room because the two individuals who predominantly spent their time working in that room both had disabilities such that it would not have been reasonable to ask them to do other work. Indeed, we repeat what we have already noted that the Claimant did not actually himself suggest that this should be done.

Harassment Related to Disability

68. The Claimant relies upon the following conduct:

68.1. "Stephen Maguire accusing the Claimant of abusing the system and to confess to not wanting to work in December 2021."

Mr Maguire did not so accuse the Claimant. He explained to the Claimant why his pattern of absences could suggest an abuse of the system and the Claimant accepted that this could be so. Mr Maguire then went on to warn him that he would monitor the situation.

68.2. "On 21 December 2022 Mr Earl asked the Claimant about next week and threatened the Claimant by saying, *"if you go on childcare I will deal with you".*"

Mr Earl did ask the Claimant whether he intended to work on 26 and 27 December 2022. When the Claimant said he would not work and explained his childcare problems by reference to the Nursery closure and his wife's work, Mr Earl explained that the Emergency Leave Policy would not apply and that he expected the Claimant to work. He did not threaten the Claimant using the words quoted or words to that effect.

68.3. "Carrying out an investigation for taking 26 / 27 December 2022 off for childcare reasons, including:

(a) visiting the Claimant's wife's place of work on 26 December to take photographs, and

(b) obtaining a false statement from Daniel Dellar."

We have already set out our findings in these regards.

68.4. "Dismissing the Claimant on 11 January 2023."

Again, we have set out our relevant findings above.

69. This was, in each case, conduct which was not wanted by the Claimant.

70. In no case did this conduct relate to the Claimant's disability. Only the first has any connection to the disability but it was the pattern of absences and its interrelationship with sick pay entitlements that led to the Respondent's comments. It was unrelated to the cause of those absences, not all of which were due to knee pain.

71. The comments and conduct relied on did not have the forbidden purpose or effect and certainly could not reasonable have done so in all the circumstances.

Direct Religious Discrimination

72. It is accepted that the Claimant is a Christian.

73. Three instances of alleged less favourable treatment are here relied upon:

73.1. Investigating the Claimant as part of the disciplinary process;

73.2. "Obtaining a false statement from Mr Dellar regarding why the Claimant was at home on 26 December 2022. The Claimant states that Daniel Dellar was instructed to provide the Respondent that the Claimant was at home on 26 December because it was a religious holiday for him."

73.3. Dismissing the Claimant.

74. The Respondent did investigate the Claimant's actions and did dismiss him. There was no such instruction given to Mr Dellar, as already stated Mr Dellar was asked to give a statement which recorded what he had told Mr Earl and he did so.

75. There was no less favourable treatment. The Claimant was treated in the manner that the Respondent would have treated anyone in materially similar circumstances, regardless of their religion or belief.

Detriment for Taking Parental Leave

76. The Claimant did not make any application to take parental leave. The Schedule 2 paragraph (3) notice of 21 days was not given. Hence the Respondent had no opportunity to give a counter notice to postpone the leave as it might well have done in this case, for operational reasons. It follows that the three alleged detriments relied upon cannot be ones the Claimant was subjected to because of his seeking to take advantage of his statutory right. Furthermore, it follows from our findings that none of them, (monitoring the Claimant's wife's workplace, enquiring of Mr Dellar and instigating the disciplinary process) were causally linked to any such application, even if the Claimant's conduct could be said to amount to the giving of a notice in time, which in our view it could not.

Conclusion

77. In those circumstances and for the reasons we have set out extensively above, all of the claims are dismissed.

Approved by:

Employment Judge A Clarke KC

Date: 14 January 2026

Sent to the parties on: 29 January 2026

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For the Tribunal Office.

which a charge is likely to be payable in most but not all circumstances. If a transcript is produced it will not include any oral Judgment or reasons given at the Hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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