EMPLOYMENT TRIBUNALS

Claimant: Mr P Trela

Respondent: DHL International (UK) Limited

Heard at: Reading

On: 22, 23 and 24 October 2025

Before: Employment Judge Hawksworth
Ms C Carr
Dr C Whitehouse

Appearances
For the claimant: represented himself
Polish speaking interpreter: Ms M Dynos
For the respondent: Mr D Calvert (counsel)

JUDGMENT was given at a hearing on 24 October 2025 and sent to the parties on 12 November 2025. Written reasons were requested by the respondent under rule 60(4) of the Employment Tribunal Procedure Rules 2024. The request was made outside the time limit in rule 60(4), but time was extended under rule 5(7) and rule 6(2)(a). The following reasons are provided.

REASONS

Introduction

Summary of claim, response and judgment

1. The claimant worked as a courier driver for DHL from 18 April 2017. He had an injury at work on 19 July 2022 and was dismissed on 31 January 2023. He claimed unfair dismissal, discrimination arising from disability, and whistleblowing detriment.

2. The respondent defended the claim. The respondent said the claimant was fairly dismissed for capability reasons, and was not subject to discrimination or whistleblowing detriment.

3. The complaints of unfair dismissal and discrimination arising from disability succeeded. The complaint of whistleblowing detriment did not succeed because we found that the claimant did not make any protected whistleblowing disclosures.

Issues

4. The issues for determination in the claimant's claim were discussed and finalised at a preliminary hearing on 11 October 2023 (page 50).

5. An amended version of the list of issues was produced for the hearing. This recorded that the question of whether the claimant had a disability for the purposes of the Equality Act 2010 was no longer in dispute. It also listed the legitimate aims relied on by the respondent in the complaint of discrimination arising from disability, as set out in the amended grounds of resistance.

Hearing and evidence

6. The final hearing took place at Reading tribunal on 22, 23 and 24 October 2025. We were grateful for the assistance at the hearing of Ms Dynos, Polish speaking interpreter.

7. The claimant required an adjustment to the usual seating in the tribunal because of discomfort when seated and restrictions on the extent to which he can turn while seated. He confirmed that he was happy with the adjusted seating plan. We also said that it was fine to get up and move around during the hearing, and we accommodated extra short breaks as needed.

8. We had a hearing bundle which had 413 pages. Page numbers in these reasons refer to that bundle.

9. The parties' witnesses had all produced written witness statements. After reading the statements in the morning of the first day, we heard the claimant's evidence for the remainder of the first day.

10. During the course of the claimant's evidence the claimant and the tribunal viewed some short films of the respondent's vehicles which had been taken by the respondent.

11. We heard from the respondent's three witnesses on the morning of the second day.

Closing comments, deliberation, judgment and reasons

12. The parties made closing comments on the afternoon of the second day. We took some time to make our decision on the morning of the third day of the hearing.

13. On the afternoon of the third day we told the parties our judgment. We explained our reasons for reaching our judgment. For each of the legal complaints, we told the parties our findings of fact and the conclusions we had reached in the claimant's case, outlining the relevant legal principles we had applied to reach those conclusions.

14. We said that a written copy of the judgment would be automatically sent to the parties, but that written reasons would only be sent if one or both of the parties requested them. We explained the relevant time limits.

15. There was not enough time remaining in the three days to decide what compensation or other remedy should be awarded. A further hearing day has been arranged for that. We made case management orders for the parties to prepare for the remedy hearing.

16. The respondent's representative wrote to the tribunal on 16 January 2026 asking for written reasons. The judge had no record of a request for written reasons being made by either party at the hearing. The respondent's written request was made out of time. The tribunal invited comments from the claimant. He objected to the late request because he said it would be unfair. He did not say that there would be any hardship to him from the late request being allowed. Written reasons were likely to be of some benefit to both parties and to the tribunal for the remedy hearing. The judge decided that the respondent's request for written reasons could be accepted, with the time limit being extended under rule 5(7) and rule 6(2)(a) of the Employment Tribunal Procedure Rules 2024.

17. In these written reasons, our findings of fact are set out separately, and this introduction and the legal provisions have been included.

Findings of facts

18. This section of the judgment explains what we decided happened in the claimant's case. We do not include all the facts we heard about, rather we focus on those aspects which were of most assistance in determining the issues before us.

19. We include undisputed facts here as far as they help us to understand the chronology and make our decision about the claim. Where the parties disagreed about what happened, we decided, by reference to the evidence that we heard and read, what we thought was most likely to have happened.

20. The claimant began working for the respondent as a driver on 18 April 2017. In January 2022 he was required to change from driving a Sprinter van to a Luton van. He felt the Luton van caused him back problems.

<u>Complaints about the van</u>

21. We find that during the period January to July 2022 the claimant complained about the Luton van many times, verbally and in writing, to managers Russell Jepson and Mark Wright and to Linda De Souza, HR advisor. He complained about the impact on his back of driving a Luton van rather than a Sprinter van.

22. We carefully considered the evidence about the complaints the claimant made about the Luton van, including the contents of his written complaints and what he said about the verbal complaints. There was nothing in the complaints to suggest that he believed there was any wider public element to the complaint. During the hearing we asked him about the extent to which he believed that he was making

these complaints in the public interest. He was unable to explain why he believed that there was any public element to the concerns he was raising. We find that his complaints were always in terms of his own health and safety.

Sickness review meetings

23. On 22 July 2022 the claimant injured his shoulder at work. He began a period of sickness absence as a result of the shoulder injury. He did not return to work for the respondent after this date.

24. There were two sickness review meetings in September 2022 and two in November 2022.

25. The respondent obtained an Occupational Health report on 26 September 2022. The report said that:

    25.1. Mr Trela had a physical impairment to his shoulder, very limited function and found difficulty with day to day tasks such as getting changed;
    25.2. Mr Trela was not fit for his substantive role due to limited function and that that would remain the case until after surgery. At the time of the Occupational Health assessment no date for surgery had been set;
    25.3. a full recovery would take four to six months after surgery although some symptoms could last for up to and over a year after surgery. A level of recovery sufficient to allow a return to work would take roughly 12 to 14 weeks after the surgery.

26. During the sickness review meeting (and the later capability meetings) Mr Trela was doing his best to keep the respondent updated about plans and the timing of his operation, but his doctors gave him very little information about the likely date for surgery.

Capability meetings

27. The respondent began taking steps under its Capability Policy and Procedure. There was a capability meeting on 12 December 2022 and capability meetings on 18 and 31 January 2023.

28. The Capability Policy and Procedure contained a requirement for a search to be carried out for suitable alternative roles in circumstances where the employee was not fit for their substantive role. Our findings of fact about the respondent's consideration of alternative roles are as follows:

    28.1. First, the Occupational Health report focused on the claimant's fitness for his substantive role. It did not advise on whether he could do any other roles while waiting for surgery.

    28.2. At the capability meeting on 12 December 2022 the HR advisor asked Mr Trela whether there were other roles that could get him back to work. He said he could not really do much because he could only use his right hand. He suggested a role handing out keys to drivers. Mr Jepson said that role was not

a possibility because there was already someone in it and, in any event, that person also handled shipments, lifted, scanned, and loaded belts which the claimant could not do.

28.3. The HR advisor at that meeting concluded that, while the capability process normally includes a four week job search, they would not do one in the claimant's case because she did not think there was any point.

28.4. At the capability meeting on 18 January 2023 Mr Jepson said the respondent had done a search but there was no vacancy which supported his needs. The claimant said he could do a scanning role. In his evidence to us Mr Jepson said HR had carried out a search and there were no operational roles. The site had other jobs that did not involve lifting but Mr Jepson was unsure whether the search had considered non-operational roles.

28.5. At the capability meeting on 31 January 2023, Mr Trela said that his left hand was a bit better but the muscle still had to be fixed. He could do different kinds of work, he could drive, but he could not lift anything heavy with his left hand. He suggested something in the warehouse like scanning. The respondent did not follow this up.

29. At the capability meeting on 18 January, Mr Trela's union representative said that they thought Mr Trela was disabled under the Equality Act. At the meeting on 31 January 2023, Mr Trela's union representative suggested that Occupational Health advice should be sought on whether Mr Trela met the definition of disability under the Equality Act. The respondent did not take this step.

Dismissal

30. By the time of the capability meeting on 31 January 2023, Mr Trela had not been given a date for surgery.

31. The claimant was dismissed by Mr Jepson at the capability meeting on 31 January 2023. We find that at the time of dismissal, Mr Jepson believed that Mr Trela was no longer capable of performing his duties as a courier driver.

32. The respondent did not obtain an updated Occupational Health report before the decision to dismiss. There was no up to date information about whether Mr Trela might be able to do any alternative role, or whether any non-operational role might be available.

Appeal

33. Mr Trela appealed against dismissal. The appeal meeting took place on 1 March 2023. Tony Amos was the appeal manager.

34. Mr Amos did not review the position on alternative roles. He did not see that as part of the remit of the appeal.

35. The claimant's appeal was refused on 13 March 2023.

The law

Unfair dismissal

36. Section 98 of the Employment Rights Act 1996 says:

> *"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
>
> *(a) the reason (or, if more than one, the principal reason) for the dismissal, and*
>
> *(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
>
> *(2) A reason falls within this subsection if it—*
>
> *(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do*
>
> *…*
>
> *(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case."*

37. It is for the employer to show the reason for dismissal. If the employer shows a potentially fair reason for dismissal, a neutral burden applies when considering the fairness of the dismissal in the circumstances.

38. In a complaint of unfair dismissal which the employer says is for capability reasons, the factors which the tribunal will usually consider include whether:

    38.1. The respondent genuinely believed the claimant was no longer capable of performing their duties;
    38.2. The respondent adequately consulted the claimant;
    38.3. The respondent carried out a reasonable investigation, including finding out about the up-to-date medical position;
    38.4. The respondent could reasonably be expected to wait longer before dismissing the claimant; and
    38.5. Dismissal was within the range of reasonable responses.

Discrimination arising from disability

39. The definition of disability is contained in section 6 of the Equality Act 2010:

> *"(1) A person (P) has a disability if:*
>
> *(a) P has a physical or mental impairment; and*
>
> *(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."*

40. Schedule 1 of the Equality Act sets out additional detail concerning the determination of disability. In relation to long-term effects, paragraph 2 of schedule 1 provides:

> *"(1) The effect of an impairment is long-term if –*
>
> *(a) it has lasted for at least 12 months,*
>
> *(b) it is likely to last for at least 12 months, or*
>
> *(c) it is likely to last for the rest of the life of the person affected.*

41. In these contexts, likely should be interpreted as meaning that it could well happen (paragraph C3 of the statutory Guidance on the Definition of Disability).

42. Section 15(1) of the Equality Act 2010 provides that a person (A) discriminates against a disabled person (B) if:

> *"(a) A treats B unfavourably because of something arising in consequence of B's disability, and*
>
> *(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim."*

43. Section 15(2) says that:

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

44. In *Pnaiser v NHS England* 2016 IRLR 170, the EAT summarised the approach to be taken under section 15:

44.1. The tribunal must identify whether there was unfavourable treatment and by whom.

44.2. It must determine the cause of or reason for the treatment, focusing on the conscious or unconscious thought processes of the alleged discriminator.

44.3. There may be more than one reason or cause for the treatment and, as in a direct discrimination case, the 'something' need not be the main or sole reason for the treatment but it must have at least a significant (more than trivial) influence so as to amount to an effective reason for or cause of it.

44.4. The tribunal must determine whether the reason or cause (or a reason or cause) is something arising in consequence of the claimant's disability. That is an objective question and does not depend on the thought processes of the alleged discriminator. The expression 'arising in consequence of' could describe a range of causal links, for example it could include more than one link.

44.5. If an effective reason or cause is 'something arising in consequence of' the claimant's disability, the tribunal will consider whether the respondent can show that the treatment is a proportionate means of achieving a legitimate aim.

Burden of proof in complaints under the Equality Act

45. Sections 136(2) and (3) provide for a shifting burden of proof:

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) This does not apply if A shows that A did not contravene the provision."*

46. This means that if there are facts from which the tribunal could properly and fairly conclude that there has been unlawful discrimination, the burden of proof shifts to the respondent.

47. If the burden shifts to the respondent, the respondent must provide an "adequate" explanation, which proves on the balance of probabilities that the respondent did not fail to make reasonable adjustments.

48. The respondent would normally be expected to produce "cogent evidence" to discharge the burden of proof. If there is a prima facie case and the explanation for that treatment is unsatisfactory or inadequate, then it is mandatory for the tribunal to make a finding of discrimination.

Protected disclosures (whistleblowing)

49. Section 43A of the Employment Rights Act 1996 provides that a protected disclosure is:

49.1. a 'qualifying disclosure' within section 43B;

49.2. which is made in accordance with one of six specified methods of disclosure set out in sections 43C to 43H.

50. Section 43B defines a qualifying disclosure. Sub-sections 43B(1) and (5) say:

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

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

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

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

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

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

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

…

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1)."

51. In summary, a qualifying disclosure is i) a disclosure of information that ii) in the reasonable belief of the worker making it, is made in the public interest and iii) (again, in the reasonable belief of the worker making it) tends to show that one or more of six 'relevant failures' has occurred, is occurring or is likely to occur. Relevant failures include failing to comply with a legal obligation and endangering health and safety.

52. Points ii) and iii) concern the claimant's beliefs. The claimant must have both these beliefs, as a matter of fact and on a subjective basis. If they do, their beliefs must be reasonable beliefs to hold, on an objective basis.

53. To decide whether a qualifying disclosure is a protected disclosure, the method of disclosure must be considered. A qualifying disclosure made to an employer is a protected disclosure under section 43C(1)(a).

<u>Protected disclosure (whistleblowing) detriment</u>

54. Protection against detriment for making a protected disclosure is set out in section 47B of the Employment Rights Act which says:

"A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

55. 'Detriment' is given a wide interpretation. It means putting under a disadvantage, or treatment that a reasonable worker might consider to be to their detriment (*Ministry of Defence v Jeremiah* 1980 ICR 13, CA).

56. The test for whether a detriment was done 'on the ground that' the worker has made a protected disclosure is explained in *Fecitt and others v NHS Manchester*

[2012] IRLR 64, CA. What needs to be considered is whether the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the worker. This requires examination of both the conscious and subconscious thought processes of the person who carried out the alleged detrimental treatment.

Conclusions

57. We apply these legal principles to the facts as we have found them to reach our conclusions on the issues for decision by us.

Unfair dismissal

58. The legal principles are set out in section 98 of the Employment Rights Act. There are broadly two parts to the test.

59. The first is that the reason for the dismissal has to be one of the reasons listed in section 98(2) known as potentially fair reasons for dismissal.

60. We found that Mr Jepson, at the time of dismissal, genuinely believed that the claimant was no longer capable of performing his duties in that he was no longer capable of performing his substantive role. Mr Trela had been off sick since his injury at work on 22 July 2022 and would not have been able to return to his substantive role until after his surgery and probably at least three months after that. The principal reason for Mr Trela's dismissal on 31 January 2023 was a capability reason, that is long-term absence. That is one of the potentially fair reasons for dismissal.

61. We go on to the second part of the test, set out in section 98(4). In summary, that requires us to consider, applying a neutral burden, whether the dismissal was fair in all the circumstances, including the respondent's size and administrative resources. We have to consider whether the respondent acted reasonably in these circumstances in treating the long-term absence as sufficient reason to dismiss.

62. As we explained at the start of the hearing, our role is not to make our own decision. We do not decide whether we would have dismissed Mr Trela in these circumstances or whether dismissal was 'the right decision'. The law recognises that different employers might take different approaches in the same circumstances. We therefore have a more limited role. We have to assess whether this decision was one of the reasonable decisions that a reasonable employer could have made. Another way of describing this is whether dismissal was in the range of reasonable responses in these circumstances.

63. We explain our reasons in respect of each of the remaining factors set out in the list of issues.

64. The second factor is whether the respondent adequately consulted the claimant. We find that the respondent did adequately consult the claimant. There were four sickness review meetings in September and November 2022 and three capability meetings in December and January 2023.

65. The third aspect for us is whether a reasonable investigation was carried out including finding out the up to date medical position. The respondent obtained an Occupational Health report on 26 September 2022. It said that Mr Trela was not fit for his substantive role due to limited function and that that would remain the case until after surgery. At the time of the Occupational Health assessment and the dismissal no date for surgery had been set. The Occupational Health report focussed on the claimant's substantive role as a courier and did not advise on whether he could do any other roles while waiting for surgery. It was obtained four months before the dismissal. The respondent did not obtain any updated report before considering the dismissal and in particular did not seek advice on whether the claimant could do other roles. That meant that at the time of dismissal the respondent had no medical advice on possible other roles the claimant could do. We return to this in the next factor.

66. The fourth factor for us to consider is whether the respondent could reasonably be expected to wait longer before dismissing. This requires us to consider the question of when Mr Trela's operation was likely to take place and the information about that that he provided. We have found that during the sickness review meetings and the capability meetings Mr Trela was doing his best to keep the respondent updated about plans and the timing of his operation, but his doctors gave him very little information about the likely date. There was no dispute between the parties that at the time of the dismissal Mr Trela had no date for his surgery and that there would be a long wait for him to be fit to return to his substantive role after the surgery. There would be a wait of at least 12-14 weeks.

67. One of the steps that a reasonable employer would have taken in these circumstances would have been to consider whether there were alternative roles which Mr Trela could perform while waiting for his surgery and waiting to return to his substantive role. The respondent's Capability Policy and Procedure required a search to be carried out for suitable alternative roles. We have found that:

    67.1. the Occupational Health report focussed on fitness for the substantive role not an alternative role;

    67.2. the capability process normally includes a four week job search, but none was done in the claimant's case because the HR advisor did not think there was any point;

    67.3. there was no evidence that any search for non-operational roles was carried out;

    67.4. the claimant was suggesting roles or functions that he could perform, but these were not followed up.

68. We have decided that the process adopted to consider alternative work fell outside the range of reasonable processes that a reasonable employer would have adopted. In circumstances where Mr Trela was suggesting that he could do some work, a reasonable employer of the size and administrative resources of the respondent would have obtained up to date advice from Occupational Health about what alternative work Mr Trela might be able to do. Before deciding whether to dismiss, a reasonable employer would have considered whether Mr Trela could

perform non-operational roles. A reasonable employer would have reviewed the position at the time of dismissal in January and again at the time of the appeal in March, in case a suitable role had become available by then. These are steps that a reasonable employer of the size and administrative resources of the respondent, considering an absence arising from an injury at work, would have taken. This procedural failing was not corrected at the appeal stage as Mr Amos did not see it as part of the remit of the appeal.

69. The possibility of an alternative role being available for the claimant is an important part of whether the respondent would have reasonably been expected to wait longer before dismissing the claimant. It would be reasonable to wait longer if the employee is doing some work than if they are unable to work at all.

70. The fifth and final point for us on the question of the fairness of the dismissal in the circumstances is whether it was within the range of reasonable responses. As we have explained, we have decided that it fell outside of the range of reasonable responses. That was because of the approach to considering alternative roles. For those reasons, we have concluded that the dismissal was unfair.

71. We have not considered what compensation should be awarded. That will be considered at another hearing. As part of that, we will consider whether, if a proper search had been carried out for an alternative role, a suitable role would have been identified and, if so, how long the claimant would have been able to stay in that role and/or whether the claimant would have been able to return to his substantive role. That requires us to consider a principle called the Polkey principle, meaning whether (or when) the respondent could have fairly dismissed the claimant.

Discrimination arising from disability

72. Next we explain our reasons for our decision on the complaint of disability discrimination.

Knowledge of disability

73. We start by looking at the question of the respondent's knowledge of Mr Trela's disability.

74. The definition of disability is in section 6 of the Equality Act. The respondent accepts that Mr Trela had a disability as a result of his shoulder injury but does not accept that it knew that the claimant was disabled at the time of the dismissal.

75. Section 15(2) of the Equality Act says that an employer does not discriminate if they do not know and could not reasonably have been expected to know that the employee has a disability.

76. We have to decide whether the respondent knew, or could reasonably have been expected to know, that the claimant had the disability and, if so, from when.

77. In terms of actual knowledge, neither Mr Jepson nor Mr Amos actually knew that the claimant had a disability under the Equality Act. Mr Jepson did not consider it at all. Mr Amos was advised by HR that the claimant's shoulder injury was not a

disability. But, in addition to actual knowledge, we have to consider whether the respondent could reasonably have been expected to know about the disability. We have decided that it could. This is for two reasons:

78. First, and in any event, the Occupational Health report contained information from which the respondent could reasonably have been expected to know that the elements of the test for disability were met by the date of dismissal:

    78.1. The report said that Mr Trela had a physical impairment to his shoulder;
    78.2. it was understandable from the report that the impairment was having a substantial effect on Mr Trela's day to day tasks such as getting changed.
    78.3. As to whether the effects were long term, they had started on 22 July 2022 and had therefore not lasted for 12 months by the date of dismissal on 31 January 2023. But the definition of disability is also met if the effects are likely to last for 12 months. Here, "likely" means 'could well happen'. The report said that full recovery was likely to take roughly four to six months after surgery with some symptoms lasting up to and over a year. So, by the time of the capability meetings in January 2023 and the date of the dismissal, the respondent knew that the claimant had had the effects for around six months and that he was not likely to recover fully for a further four to six months after surgery, and some symptoms 'could still last for up to and over a year'. That was information from which the respondent could reasonably have been expected to know that the effects of the shoulder injury on the claimant's day to day activities could well last 12 months.

79. Secondly, Mr Trela's union representative raised the question of disability under the Equality Act at the capability meetings on 18 and 31 January 2023, and suggested that Occupational Health advice should be sought on the point. The respondent did not take this step. If it had done it is likely, based on the earlier report, that the Occupational Health advice would have confirmed that the tests for disability were likely to be met.

<u>Unfavourable treatment because of something arising from disability</u>

80. We next consider two other elements of the discrimination arising from disability complaint, that is whether there was unfavourable treatment because of something arising from disability.

81. Mr Trela says that his dismissal was unfavourable treatment because of being on a period of sick leave (the period from the date of his injury until his dismissal). We accept, and there did not appear to be any dispute about this, that the sick leave was disability-related sick leave. It was something arising in consequence of the claimant's disability. The dismissal was unfavourable treatment.

82. The claimant was dismissed because of being on disability-related sick leave. The reason for the dismissal was his inability to be at work to perform his substantive role, in other words, his being on disability related sick leave.

83. That means that the burden is on the respondent to show that the dismissal was a proportionate means of achieving a legitimate aim. The aims relied on by the respondent are: efficient use of resources ensuing good standards of attendance,

maintaining fair sickness management, ensuring fair and consistent application of policy and ensuring that customer service demand can be met. We accept that these are legitimate aims.

84. However, for reasons similar to those explained in relation to the unfair dismissal complaint, we find that the failure to properly consider alternative roles meant the dismissal was not a proportionate means of achieving those aims. A less discriminatory approach would have been to give full consideration to whether there was an alternative role which could be done while Mr Trela was awaiting surgery. For those reasons, the discrimination complaint succeeds.

85. Again, we have not considered at this stage what would have happened if the respondent had properly considered whether there was a suitable alternative role for Mr Trela. If they had done, would the situation have been any different? Those are questions that will be considered at the next hearing.

Whistleblowing detriment

86. The third and final complaint is the complaint of whistleblowing detriment or protected disclosure detriment.

87. We start by deciding whether Mr Trela made disclosures which count as protected disclosures under section 43B of the Employment Rights Act.

88. We have found that the claimant complained many times, verbally and in writing, to Mr Jepson, Mr Wright and Ms De Souza during January to July 2022 about the impact of working with a Luton van. Those were disclosures of information about possible danger to his health and safety. Those parts of the test are met.

89. But an essential element of a protected whistleblowing disclosure is that the person making the disclosure believes it to have been made in the public interest. The person making the disclosure must believe, at the time they make their disclosure, that the disclosure is in the public interest, that there is something wider than a personal concern.

90. We have found, for reasons explained above, that Mr Trela did not believe that his complaints were made in the public interest. That means that the whistleblowing complaint cannot succeed.

Remedy hearing

91. A date has been set for a remedy hearing, and case management orders have been made with the steps for the parties to take to prepare for the remedy hearing. Those have been sent separately.

Approved by:
Employment Judge Hawksworth

Date: 17 February 2026

Sent to the parties on: 17 February 2026

For the Tribunals Office